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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,	:	
	:	
PLAINTIFFS,	:	
vs.	:	DOCKET NUMBER
	:	1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL.,	:	
	:	
DEFENDANTS.	:	

TRANSCRIPT OF BENCH TRIAL - VOLUME 3 PROCEEDINGS
BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT SENIOR JUDGE
JANUARY 11, 2024

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

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UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

A P P E A R A N C E S O F C O U N S E L**FOR THE PLAINTIFFS DONNA CURLING, DONNA PRICE, JEFFREY SCHOENBERG:**

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(...CONT'D...)

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; January 11, 2024.)

THE COURT: Have a seat.

Plaintiffs ready to call their next witness?

MR. CROSS: Yes, Your Honor.

Did you want to take up the issue of the Coffee County objection? Because we probably need to resolve that first.

THE COURT: That's fine. I thought you were going to send us some citations or something, so -- I thought that you were -- we were waiting on that.

MR. CROSS: Yeah. We had hoped, but in the -- I think probably about the two hours of sleep we all got, we're going to address it orally, if we may.

THE COURT: That's fine.

MR. CROSS: All right.

Your Honor, there are a variety of different reasons -- I'm sorry.

THE COURT: I did not get a physical copy of the cases because I didn't realize we were going to deal with this first thing.

LAW CLERK: Not yet.

THE COURT: Could you print them.

Thank you.

Go ahead.

1 MR. CROSS: So there are a variety of reasons why the
2 State's objection fails and I'll walk through each of them
3 briefly.

4 The first argument, Your Honor, is it is waived. So
5 three different witnesses testified in this courtroom in this
6 trial about the breaches in Coffee County and how those
7 breaches bear specifically on their claims as plaintiffs from
8 an injury standpoint, from a redressability and traceability
9 standpoint and there was no --

10 THE COURT: A little slower and come up in front of
11 the microphone because I'm not getting it all.

12 Thank you.

13 MR. CROSS: So the first argument is waiver, Your
14 Honor, because there were three witnesses, Ms. Martin,
15 Ms. Price, and Mr. Davis, who all testified about the breaches
16 in Coffee County.

17 No objection from the State. The law is clear, you
18 can't just sit through a trial as evidence comes in and then
19 raise it later. The objection is waived.

20 With Ms. Martin, she explained, for example, that a
21 big component of what they do, the central component of what
22 the Coalition does, is education on voting issues.

23 They have had to divert resources, of course, because
24 of this litigation, which takes resources away from their
25 mission, which includes, for example, as she explained,

1 educating voters on what happened in Coffee County. It is
2 implications. How to be more secure in light of that. She
3 talked about that specifically with no objection from the
4 State.

5 Ms. Price explained how the Coffee County breaches
6 bear on the confidence she has in the voting system and the
7 burdens imposed and on her as a voter. And that the breaches
8 in Coffee County which are, of course, public knowledge have
9 undermined her confidence in a voter -- as a voter in the
10 system.

11 And it is a critical component of the relief she
12 seeks. Because she wants a voting system that has a ballot
13 that reflects her -- I'm sorry, reflects her selections as cast
14 because we have to worry that Coffee County breaches are going
15 to happen in the future, as our experts will explain.

16 So what we're talking about in this case, in part, is
17 the need to have a voting system that is robust enough that
18 when a breach like Coffee County occurs, and it likely will
19 occur again at some point. As the State themselves will tell
20 you, you can't protect everything -- you can't protect a system
21 perfectly. And so that is why it is so important to have a
22 system like this that has a ballot that is verified by the
23 voter.

24 Mr. Davis also talked about how they have had to
25 spend time on open records requests, for example, trying to

1 educate their own people about what happened in Coffee County.
2 And like Ms. Martin, he also shares that concern. Three
3 witnesses, not one objection. That is point one. It is
4 waived.

5 Secondly, Your Honor, again, the witnesses have shown
6 exactly how this is traceability -- how it is traceable to the
7 State. And we will show this through additional witnesses.

8 For example, Mr. Sterling will testify that all of
9 the equipment that was breached in Coffee County is owned by
10 the State. They control that equipment. In fact, they are the
11 ones that decided what happened with that equipment after the
12 breaches.

13 As Mr. James Barnes will testify in the deposition
14 testimony we will submit, when he learned about the potential
15 breach, when he had a concern that it had been compromised, he
16 says, I contacted the State about it. It is not my job to
17 speculate on what anything may or may not be. It is my job to
18 report a problem once I have it.

19 And then he also said when it comes to election
20 security, the State certifies the equipment. He relies on the
21 State for the security.

22 That is at the core of our case, that the State
23 itself is the one that determines what equipment gets used, the
24 manner in which it gets used, including down to the level of
25 the security. And the State alone mandates that.

1 And, in fact, Exhibit 407 is a memo from Mr. Harvey
2 telling the counties that, again, the State determines how
3 voting is cast. He says, There is provision of Georgia law
4 that allows the State to move to paper ballots in the event
5 that the machines are inoperable or unsafe.

6 And, of course, part of what we have asked is that
7 counties be allowed to do that. And the counties should even
8 be allowed to exercise their own judgment as superintendents,
9 to be able to move to paper ballots, which the Coffee County
10 superintendent, for example, could decide because of the
11 breaches there.

12 And Mr. Harvey said, you can't do that. We as the
13 State -- this is what he said. If we ever reach a point where
14 our office feels that these machines cannot be trusted to
15 accurately deliver election results, we, the State, will invoke
16 the statutory provision. Until then, you can't do anything
17 other than what we tell you to do.

18 In fact, Mr. Sterling will testify exactly that. He
19 will say that when the State tells the counties to do
20 something, they do it. Because they don't want to be drawn in
21 front of the State Election Board for violating State policies
22 and State rules, Your Honor.

23 In the opening statement, Your Honor may recall I
24 played a statement from Secretary Raffensperger where he
25 says -- his response to our findings from our experts is what

1 Dr. Halderman and others have found is not the real world.
2 Because they have no refutation of his findings on the merits
3 that is the only defense they have ever asserted, is that you
4 can disregard whatever findings our experts have because no one
5 can exploit them in the real world.

6 This is -- Coffee County is a direct refutation of
7 their defense in this case. They don't get to tell Your Honor
8 no one can exploit these vulnerabilities because no one can
9 access the system, where is their defense.

10 Secretary Raffensperger won't be here to say it in
11 court. I'm sure we all know why that is. But somebody will
12 say it. Mr. Sterling and others will say it.

13 We are allowed to rebut that with the Coffee County
14 breaches to show that not only is the real world, can it
15 happen, but it has.

16 Which then gets to point of what has the State done
17 about it. And so there's sort of two components to think
18 about. One is the breach happened and what does the breach
19 mean for the security of the system in a system the State
20 itself controls? It mandates the security. The counties rely
21 on it for the security.

22 The other piece of it is: What has the State done
23 since the breach has arose? And as our experts will explain,
24 if you don't mitigate those, the failures that led to Coffee
25 County, then you're imposing an unreasonable, unconstitutional

1 burden on voters to continue to vote in a system that the State
2 will tell you they don't actually know if it works today
3 because of Coffee County.

4 Gabe Sterling will testify they don't know if malware
5 was left. They haven't looked. They don't know whether the
6 system still functions properly. They left that to the GBI.
7 We never heard anything from them since.

8 That is a key part of our case, is that they are
9 requiring voters to vote in a system that they themselves as
10 the State managing that system can't even say whether it works
11 properly. They will say it publicly. But Secretary
12 Raffensperger will not say it under oath in this court.

13 Spalding County is another example of this, Your
14 Honor. We will present evidence that there was an attempt in
15 Spalding County involving the SullivanStrickler firm which was
16 the firm that was involved in Coffee County on January 7 where
17 they attempted to do something similar under the guise of
18 auditing or making images of the equipment there.

19 The State is the one that shut that down. Because
20 the Secretary's office is the one that is responsible for
21 enforcing the security.

22 Secretary Raffensperger's office stepped in to warn
23 Spalding County that it was illegal to do what they were
24 contemplating. And so it is on them to prevent this from
25 happening. And then, of course, after the fact to take

1 measures to prevent it from happening again.

2 Mr. Sterling will testify that the only way anyone
3 can get access to voting equipment is if the State, and in
4 particular the SEB, authorizes it.

5 And he will say there was no authorization here. And
6 he will also say that the breaches in Coffee County increased
7 the risk in the voting system. He has testified to it before.
8 He will testify to it in this case again.

9 The SEB, of course, is the one, along with the
10 Secretary of State, that have the statutory investigative
11 authority when these types of events occur.

12 Mr. Stone, from Coffee County, will testify that the
13 board expects the State to undertake measures to figure out
14 what happened with the breach and to take measures to deal with
15 it. He will say, The county relies on the State to mitigate
16 risks associated with software on the ICC and the EMS.

17 And again, Your Honor, I think it is particularly
18 rich for the State to even raise this objection when they are
19 the ones that decided what equipment remained after the
20 breaches.

21 In the summer of 2021, the State is the one that
22 decided only to take the EMS server and the ICC, even though
23 they were investigating whether it had been breached by Cyber
24 Ninjas. They have misstated that numerous times as to what
25 happened and what was investigated and when. And that will

1 play out.

2 But they made the decision to leave all the BMDs, the
3 flash drives, the Poll Pads. Everything that you're going to
4 see that was breached was copied, even down to the level of
5 altering data on some of the equipment like the EMS. They made
6 the decision to leave that in place. And it was used in future
7 elections in Coffee County.

8 The State -- the county had no discretion to do
9 anything different.

10 Credibility, lastly, Your Honor. And I'll address
11 their particular cases briefly.

12 Credibility itself is always at issue. We will show
13 that the State, including Mr. Sterling, Secretary Raffensperger
14 himself, and others have repeatedly made statements that are
15 not accurate. You're going to hear it with Mr. Germany today.
16 They have made statements about Coffee County, about what
17 happened, about what they knew and when that are not accurate.
18 And we're entitled to cross-examine them on that from a
19 credibility standpoint as well.

20 On the point of standing, Your Honor, Your Honor
21 cited in your summary judgment decision the *Garcia-Bengochea*
22 case, I think you might say, against *Carnival Corporation*. It
23 is out of the Eleventh Circuit from January 10 of last year.
24 And on the standing analysis it is spot-on.

25 This is a case where an individual, a Cuban citizen,

1 had had property taken from him by the Cuban government. That
2 property later was used by Carnival Cruise Lines and Royal
3 Caribbean as a traffic point, a maritime location. And he sued
4 them.

5 And the Court found in assessing standing, Though the
6 injury may have its origin in the confiscation of the
7 La Maritima by the Cuban government, the cruise line's alleged
8 continued use of the property without Dr. Garcia-Bengochea's
9 authorization does not render his harm less tangible today. It
10 goes on to find he has standing.

11 Even if the original actions, the breaches were
12 performed by individuals who were not themselves State actors,
13 it is entirely beside the point, which is exactly what Your
14 Honor ruled in your summary judgment decision, because the
15 State is the one that then continued to use that equipment,
16 mandated that equipment, just like here.

17 They are the ones that are forcing voters to vote on
18 that equipment and then to vote in a system that has the
19 connections to that equipment and to vote on a system that does
20 not have protective measures in place to prevent this type of
21 breach happening again, which the State is the only one that
22 could do that because they alone have the authority to do that,
23 as Mr. Harvey reminds the counties often.

24 Briefly on their cases, Your Honor, first and
25 foremost, not one of the cases they cite involves any exclusion

1 of evidence. I would say we can all end there.

2 But more into the merits of them, in each of those
3 cases, there are arguments certainly going to the liability
4 issue or the traceability. But in every one the court allows
5 the evidence and then weighs it in reaching a decision on the
6 merits.

7 It is exactly what the Court should do here. Let us
8 present our case. Let us present the evidence of the breaches.
9 Let us present the evidence of the State's failures and
10 inconsistent statements and inconsistent action.

11 Let our experts talk about why that matters for the
12 security of the system. Three plaintiffs have already talked
13 about why it matters, without objection.

14 And then Your Honor, at the end of the day, can weigh
15 that evidence and determine what weight, if any, you give it in
16 addressing standing or the merits of our claims, which is
17 exactly what happened in each of the cases they cite.

18 Looking at the *Zatler* case that they cite out of the
19 Eleventh Circuit from 1986, Your Honor, there was an inmate,
20 former inmate, who sued the Secretary of Florida's Department
21 of Corrections for sexual assault while in prison.

22 The Eleventh Circuit emphasizes, An official like the
23 Secretary of Corrections generally can be held liable for
24 damages when he breaches a duty imposed by the state or local
25 law and this breach causes plaintiff's constitutional injury.

1 And this is the important part, Any alleged failure
2 to adopt adequate policies for inmate protection must amount to
3 a breach of Wainwright's duty and must evidence reckless
4 disregard or deliberate indifference. Reckless disregard or
5 indifferent -- deliberate indifference.

6 It is on the State. Well, I don't want to burden
7 shift. We will prove, we will prove that the State repeatedly
8 has shown reckless disregard and deliberate indifference
9 towards the security of the voting system. And that is one of
10 the ways and at its core how they violate the constitutional
11 right to vote.

12 Coffee County is a prime example of that. Their
13 failure to have security measures in place to prevent it, their
14 failure to investigate it, their failure to provide correct
15 information, consistent information to voters about what
16 happened, their failure to take future steps to protect against
17 it, all of that establishes the reckless disregard or
18 deliberate indifference towards voter security.

19 And ultimately, it is the failure of their policies
20 and their failure to act that is a key component of the relief
21 we seek and the standing that our clients have.

22 In the *Jackson* case, just briefly, Your Honor,
23 plaintiffs sued police officers alleging illegal stop and use
24 of excessive force. In that case, the plaintiffs argued that
25 the defendants did not identify themselves as police officers.

1 The plaintiffs thought they were under some kind of threat.
2 The plaintiffs themselves began shooting. The police returned
3 fire.

4 And the State argued that because the plaintiffs
5 themselves initiated this by shooting, the harm cannot be
6 traceable to the State. It wasn't their doing, there was no
7 proximate cause. And the Court said no. The Eleventh Circuit,
8 it said that a jury could find that it was reasonably
9 foreseeable, the defendants dress and illegal stop of persons
10 at this business would make defendants appear to the shop's
11 occupants as armed robbers about to harm them.

12 The same holds here, Your Honor. The State's failure
13 to act with respect to the Coffee County breaches, and you will
14 hear they have done nothing. No new security measures in
15 response to the breaches to address the breaches. Those will
16 prompt future -- that failure will prompt future intrusions
17 into this voting system, which is part of how the vote -- the
18 right to vote is abridged and violated in the State.

19 Lastly, Your Honor, on the *Fair Fight* case, there the
20 plaintiff challenged the fact that the Secretary of State, as
21 the Secretary admitted, did not update the election
22 certification training materials to reflect changes in the
23 absentee ballot cancelation process after HB 316 passed.

24 But a key difference here, Your Honor, is -- again,
25 as I have already said, there is a single mandated statewide

1 voting system that they control. They mandate the policies and
2 practices, how that gets used and what it is.

3 That wasn't the case in *Fair Fight*. Here the
4 certification materials were not and could not have been used
5 statewide for all county superintendents. Each county from
6 which plaintiffs presented isolated problems with absentee
7 ballot cancelations involved superintendents who were initially
8 certified long before the materials with correct information.

9 So in that case, Your Honor, there was not a single
10 unified state system or policy that was mandated, implemented,
11 monitored, enforced by the State. Instead, it was down to the
12 level of the counties.

13 But more importantly, the Court heard the evidence.
14 There was no exclusion. All the evidence was allowed and the
15 Court weighed it in reaching a conclusion at the end.

16 THE COURT: All right. Thank you.

17 MR. CROSS: Thank you, Your Honor.

18 THE COURT: Well, I'm going to hear the evidence in
19 the same way that Judge Jones did and these other courts. I
20 don't -- I mean, I want to proceed. We could go into endless
21 argument.

22 This should -- if this was the State's argument, I
23 think -- of such obvious centrality, I think it should have
24 raised it by motion beforehand.

25 But I'm going to hear the evidence. Whether it ends

1 up being in any way dispositive is another matter or even
2 admissible. And you've preserved your objections.

3 I will say that additionally in considering this
4 overnight, just simply contemplating the entire circumstance
5 and history of this case, is there have been -- this has been
6 the issue from the start, of course, whether adequate --
7 whether the State was taking adequate measures to protect the
8 system and ensure that voters' constitutional rights to cast a
9 vote were -- an effective vote were -- or one that was counted
10 that was at issue. And that is not different.

11 And either -- you know, I don't know what that -- in
12 the end, because we've had preliminary injunction motions,
13 et cetera. But obviously I have to weigh the evidence in the
14 end.

15 The Coffee County case situation is just part of that
16 pattern, in my mind, or part of the pattern that is being
17 alleged here. And the concerns about failure to properly
18 protect the system, properly deal with security issues have
19 been basically in every hearing I've had since 2018.

20 So this is -- you know, whether it rises to a
21 constitutional level is a whole other question. But I'm going
22 to hear the evidence. So let's proceed.

23 Call your next witness.

24 Exhibit 78 was what triggered the lengthy objection.
25 Remind me what 78 was.

1 MR. TYSON: Your Honor, Exhibit 78, as I recall, was
2 the report -- I believe it was a report from Mr. Barnes about
3 the Cyber Ninja card that he found.

4 THE COURT: Okay. Well, it's admitted.

5 **THE PLAINTIFFS' CASE (Continued).**

6 MR. KNAPP: Your Honor, good morning. Plaintiff
7 calls Robert A. Sinners for purposes of cross-examination.

8 COURTROOM DEPUTY CLERK: Please raise your right
9 hand.

10 (Witness sworn)

11 COURTROOM DEPUTY CLERK: Please have a seat.

12 If you would state your name into that microphone
13 there and spell your full name for the record.

14 THE WITNESS: Good morning, Your Honor.

15 Robert Sinners. Robert Alexander Sinners,
16 R-O-B-E-R-T, A-L-E-X-A-N-D-E-R, S-I-N-N-E-R-S.

17 MR. KNAPP: May I approach, Your Honor?

18 THE COURT: Yes.

19 Whereupon,

20 ROBERT ALEXANDER SINNERS,

21 after having been first duly sworn, testified as follows:

22 CROSS-EXAMINATION

23 BY MR. KNAPP:

24 Q. Mr. Sinners, my name is Halsey Knapp. It is a pleasure to
25 meet you here today.

1 **A.** Good to see you.

2 **Q.** I have placed in front of you a folder with your
3 deposition in it and some exhibits. When we get to that point,
4 I'll refer you to them.

5 But let me start with a few background questions.

6 **A.** Okay.

7 **Q.** First, who is your current employer?

8 **A.** I am a communications director at the Georgia Secretary of
9 State's office.

10 **Q.** And how long have you been in that position?

11 **A.** In that position, a little under two years. I have worked
12 for the office for going on three.

13 **Q.** And what was your work experience before you took on that
14 position?

15 **A.** Immediately I was election day operations director for the
16 state of Georgia for the Trump campaign.

17 Before that, regional political director for the
18 Republican National Lawyers Association.

19 Before that I was at GSA.

20 Before that, did a little real estate.

21 I mean, how long do you want to go back?

22 **Q.** And what kind of work were you performing in these
23 positions?

24 **A.** Political.

25 **Q.** Okay. And in November of 2020 there was an election here,

1 presidential election in the state of Georgia; correct?

2 **A.** That is correct.

3 **Q.** And for a period of time after that election, you believed
4 that Donald Trump had actually won the election here in
5 Georgia; is that correct?

6 **A.** I think that is fair.

7 **Q.** Okay. And, in fact, then President Trump publicly
8 declared that he had won the election in late November on
9 November 3rd as well as early November 4th?

10 **A.** That's correct.

11 **Q.** And by November the 6th -- and at that point in time, the
12 reports coming from the media and the Secretary of State's
13 office was judged that President Trump was in the lead; is that
14 correct?

15 **A.** That -- say that again.

16 **Q.** That President Trump was in the lead in the popular vote
17 in the state of Georgia for the role as president?

18 **A.** I am not entirely sure. I think there was some time where
19 he was ahead. And then as ballots were processed I think Joe
20 Biden was coming out.

21 **Q.** And when that happened, and when Joe Biden passed
22 President Trump in the general election, did that cause you and
23 the Trump campaign some concern?

24 **A.** I was concerned.

25 **Q.** Okay. And at that point in time, did you initiate

1 conversations with Misty Hampton of the Coffee County election
2 board?

3 **A.** I don't believe that to be correct. I had previously
4 reached out to a -- every election office in the state. So I
5 think to say initiated conversations would be inaccurate.

6 **Q.** Okay. And what previous communications had you had with
7 Misty Hampton or anyone from the Coffee County Board of
8 Elections?

9 **A.** I'm not entirely sure. I had made an effort to reach out
10 to every election office in the state.

11 **Q.** And that was part of your responsibility to have
12 introduced yourself and have them understand that you were
13 representing the Trump campaign if there was important
14 information that you were seeking?

15 **A.** I would say that to be accurate.

16 **Q.** Turn, if you would, to your notebook there. And behind
17 the first tab --

18 **A.** Okay.

19 **Q.** -- there is a --

20 **A.** Let me get this situated first.

21 **Q.** I can help if you like. However you want to handle it.

22 **A.** Sure. I see what is ahead of me.

23 **Q.** Okay. And would you identify for the record what
24 Defendants' Trial Exhibit 276 is, which is that one-page
25 document behind Tab Number 1.

1 **A.** Sure.

2 It is an open records request that I sent to 159 counties.
3 And that is a response from, it looks like, Misty Hampton
4 asking me if I'm still working with the Trump campaign.

5 **Q.** There we go. Excellent.

6 And in this --

7 MR. KNAPP: Your Honor, we would move for the
8 admission of Defendants' Trial Exhibit 276.

9 MR. TYSON: And, Your Honor, I understand this is a
10 defendants' exhibit, but I believe the portion of what
11 Ms. Hampton said to Mr. Sinners would be hearsay. I think the
12 portion of what Mr. Sinners said would be admissible. So we
13 would object to that top portion.

14 THE COURT: Do you want to respond at all?

15 MR. KNAPP: Excuse me?

16 THE COURT: Do you want to respond to that at all?

17 MR. KNAPP: I haven't made any use of Ms. Hampton's
18 part of it. At the moment I'm just identifying his particular
19 chain of the email.

20 THE COURT: All right. Well, subject to getting into
21 her response, I'm admitting this. And you can address that
22 later.

23 MR. KNAPP: Okay.

24 BY MR. KNAPP:

25 **Q.** What exactly were you communicating with Ms. Hampton

1 about?

2 **A.** I was not communicating with Ms. Hampton during this time.

3 On November 10th I had sent an open records request from
4 my email asking for information about vote review panels, which
5 is a post election process that takes place to adjudicate
6 ballots that, you know, are in dispute.

7 And I had sent that to 159 counties. And I had sent that
8 from my personal email because at that time, November 10th, it
9 was kind of unsure if the Trump campaign -- if my email would
10 still be active.

11 So this is information that I like needed -- I think the
12 Tuesday -- I think vote review panels were to conclude by
13 Friday. So it was just kind of like a -- the expression that I
14 want to use is vulgar, so let me think -- it was a long shot to
15 see if I could get information on vote review panels so that we
16 could send lawyers or staffers to make sure that those had
17 Republican staff or volunteers as part of that adjudication
18 process.

19 **Q.** Correct.

20 In the adjudication process, generally you have a
21 Democratic representative, a Republican representative, a poll
22 watcher watching that process as they try to determine the
23 intent of a particular vote?

24 **A.** That is, more or less, accurate. I think the third party
25 is supposed to be a nonpolitical or election official. That is

1 the third vote.

2 But yes, for purposes of this conversation, yes.

3 **Q.** And, again, you did have a Donald J. Trump email address
4 at this point in time?

5 **A.** Yes, I did.

6 **Q.** And you also had a GAEDO --

7 **A.** For the Trump campaign.

8 **Q.** And that -- what's GAEDO stand for?

9 **A.** Georgia Election Day Operations.

10 **Q.** And that was your role? Were you the state election
11 director for the Trump campaign in November of 2020?

12 **A.** I was the state election day operations director, which
13 is -- a lot of people assume that would be like a campaign
14 manager, and it is not. It is to -- the role is to oversee the
15 process of voting and volunteer recruitment for poll watchers,
16 for absentee ballot monitors, for anything kind of happening at
17 polling or voting locations.

18 **Q.** And why did you not communicate using the GAEDO email
19 address?

20 **A.** As I stated previously, I did not know if those emails
21 were going to be active. My counterparts in other states had
22 been released. And, you know, we're talking a week after the
23 campaign. Things aren't looking good. I didn't really know if
24 my email was going to be active. And this is something that
25 would require, I would say, some longevity, as typically open

1 records requests do.

2 **Q.** And notwithstanding that concern, you still interjected
3 yourself into this adjudication process?

4 **A.** I don't understand your question.

5 **Q.** Excuse me?

6 **A.** Can you rephrase that?

7 **Q.** Notwithstanding the uncertainty of whether your position
8 still was active, you are still reaching out on behalf of the
9 Georgia Republican party to 159 counties on November 10th?

10 **A.** That is typically in line with the role of an election day
11 operations director --

12 **Q.** Okay.

13 **A.** -- to reach out to election offices.

14 **Q.** Turn, if you would, to Tab Number 2.

15 Would you please review this document, Defendants' Trial
16 Exhibit 272.

17 **A.** (The witness complies.)

18 Sure.

19 **Q.** Okay. And is this an email chain of communications on
20 November 10th and November 11th between yourself and Misty
21 Hampton?

22 **A.** Sure. Let me just read over it.

23 Okay.

24 **Q.** How would you describe what these emails are?

25 **A.** An open records request. I had received a tip from Misty

1 about a board of commission meeting, and I requested an open
2 records request to her. I think she had called me.

3 **Q.** Okay. And how is it that Misty decided to call you with a
4 tip?

5 **A.** I probably -- I think I had previously reached out to her
6 office as well as, you know, all other counties. I had been
7 giving out my phone number, my email to board members,
8 activists, volunteers, everybody. I think she was probably
9 more supportive of the Trump campaign and -- yeah. We got a
10 tip.

11 MR. KNAPP: Your Honor, we would move for the
12 admission of Defendants' Trial Exhibit 272.

13 MR. TYSON: Your Honor, we would have the same
14 hearsay objection as to the statements by Ms. Hampton. I
15 believe Mr. Sinners has testified he controlled the GAEDO
16 address.

17 But in terms of the statements from others in this
18 email chain, we would object based on hearsay.

19 MR. KNAPP: Your Honor, the parts of the email that
20 Mr. Sinners authored are certainly not hearsay. He is here to
21 defend himself.

22 THE COURT: All right. Well, I'll admit it subject
23 to that and we'll see what happens to anything else. So
24 that -- I mean, I don't know if he maintained this entire
25 record also as part of his normal -- his duties as an election

1 day operation director.

2 So that will -- you know, if we end up having to get
3 into anything else, we'll deal with that but -- subject to the
4 records later. But anyway, it is admitted at least for
5 purposes of his communications.

6 MR. KNAPP: Thank you, Your Honor.

7 BY MR. KNAPP:

8 Q. On Page 257 at the bottom, is the last page. You have to
9 read email chains backwards, so let's start there for a moment.

10 A. Okay.

11 Q. Okay. And this -- this is an email from you at your
12 Georgia EDO address; correct?

13 A. Correct.

14 Q. Okay. And you generated this email in response to a tip
15 from Misty?

16 A. I would say that is accurate.

17 Q. You said what?

18 A. I would say that is accurate.

19 Q. Okay. And then she responded to you?

20 A. Yes.

21 Q. And then what you had -- what was it that you asked for in
22 your -- when communicating with Misty on November 10th?

23 A. I am seeking the official meeting minutes and audio of
24 this morning's board of elections or commissioners meeting.
25 She had called me and said there was an interesting

1 conversation, and I think she -- I think she said something
2 like the campaign might be interested.

3 So I said sure.

4 She said she would send it right to me. So yeah.

5 **Q.** And you requested her to send as much information as
6 possible; correct?

7 **A.** Sure.

8 **Q.** And why was that information of interest to you?

9 **A.** She said that it was something that would be interesting,
10 that there was a problem with the voting systems, I think. And
11 I mean, I was doing my due diligence in my role.

12 **Q.** Now --

13 **A.** You get a tip. You follow it up.

14 **Q.** Okay. And what additional follow-up did you do after
15 receiving this information?

16 **A.** I think I had sent what I received. I think it was like
17 meeting minutes. I'm not sure if I ever got any audio. But I
18 think I created an incident report or sent it to attorneys to
19 review.

20 **Q.** And what would an incident report -- to whom would that be
21 directed?

22 **A.** There was an online log-in system. I mean, comparatively
23 inside baseball, you would probably compare it to the LBJ
24 system that Democrats used. I think you're aware of that.
25 But, you know, it would -- you would input it, it would go up

1 to whoever, the lawyers that were reviewing those type of
2 things.

3 **Q.** And did you ever hear from any of those lawyers?

4 **A.** Coffee County was discussed by attorneys, yeah.

5 But I can't recall the specifics of this -- of the action
6 taken as a result of this.

7 **Q.** Did you have discussions with attorneys about what was
8 going on in Coffee County in November of 20 -- 2020? Excuse
9 me.

10 **A.** Yes.

11 MR. TYSON: Objection. I just want to make sure
12 we're not getting into -- Mr. Sinners has indicated he was
13 employed by the Trump campaign. I think the inquiry is asking
14 for conversations with lawyers for the Trump campaign
15 indicating a privilege. I'm not asserting that on behalf of
16 the campaign, but I feel like we're getting into a privileged
17 area with this line of questioning.

18 THE COURT: Well, I think he's entitled to ask did he
19 have conversations. And what the conversations -- whether he
20 is going to be asked about the substance of the communications
21 is something else.

22 But to the extent that it is, did you have
23 conversations with counsel for the Trump campaign, I think that
24 is admissible.

25

1 BY MR. KNAPP:

2 Q. Let's clarify a few things.

3 At this point in time, were you employed by the Georgia
4 Republican party?

5 A. No.

6 Q. Were you employed by the Donald J. Trump campaign?

7 A. The Trump campaign.

8 Q. Okay. And --

9 THE COURT: Could we just one -- before you -- all
10 right.

11 MR. KNAPP: Go ahead, Your Honor.

12 THE COURT: My question really was because you
13 referred by initials to this online where you logged your --
14 some information regarding I guess the LJ -- let me start
15 again.

16 There was an online log-in system you say. I mean
17 comparatively inside baseball you would probably compare it to
18 the LGJ [sic] system that Democrats use.

19 But I don't know what the LGJ system is. So I just
20 want to be sure I understand. There is online -- is it -- what
21 you are saying is there is an online log-in system as to -- as
22 to what and is it by the Republicans or is it by the Trump
23 campaign?

24 THE WITNESS: So I was using that as an example. The
25 Democrats had a system that they logged in to called LBJ, which

1 for Mr. Knapp I understand he is the counsel to the party, he
2 might understand, oh, okay, that's what it is.

3 THE COURT: My problem is I don't understand.

4 THE WITNESS: Yes, ma'am. I got it.

5 We had a comparable system. I believe it was called
6 Harpoon. It really didn't have a name. But that was on the
7 link, and it was really bare bones, but you would create an
8 incident report, you know, fill out, you know, name, county,
9 date, time type thing. You know, explain the situation, does
10 it relate to this sort of ballot or what kind of issue. There
11 were various categories.

12 And then that would be sent to, I assume, the
13 campaign in DC that had lawyers that were going through -- you
14 know, sifting through those type of reports.

15 THE COURT: All right. And it was about management
16 of the election and election results?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Is that right?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Sorry to interrupt.

21 MR. KNAPP: You may interrupt any time you want, Your
22 Honor. This is your courtroom.

23 BY MR. KNAPP:

24 Q. Mr. Sinners, and isn't it true the next day,
25 November 11th, that a Coffee County Board of Elections member

1 also reached out and communicated with you?

2 **A.** On the 11th?

3 **Q.** Yes.

4 **A.** That may be correct.

5 **Q.** Do you recall Eric Chaney? Do you know who Eric Chaney
6 is?

7 **A.** I have spoken with Eric Chaney before.

8 **Q.** Who is Eric Chaney?

9 **A.** He was a member of the Coffee County Board of Elections.

10 **Q.** Okay. And did you -- did he communicate with you on or
11 about November 11th, 2020, after you had had these
12 communications with Misty Hampton?

13 **A.** I don't recall. But I would assume that would be
14 accurate.

15 **Q.** Why don't you look behind Tab Number 3 and see if this
16 document refreshes your recollection as to whether or not you
17 had a communication with Mr. Chaney on or about November the
18 11th.

19 **A.** Sure. Yes, sir.

20 Yeah, he sent me this email.

21 **Q.** Okay. And what was Mr. Chaney communicating to you that
22 was of concern to him that he thought you should see or hear?

23 MR. TYSON: Your Honor, I'll object. Mr. Knapp is
24 asking for what Mr. Chaney said to Mr. Sinners. I think that
25 is hearsay. This is only an email from Mr. Chaney. There is

1 no indication that Mr. Sinners said anything in this email
2 chain.

3 MR. KNAPP: This is, I believe -- let's see. Let me
4 look at my -- it could be a public record. It could be a
5 present impression of events at the time. He did not recall
6 when I first asked him the question as to what the
7 communication was and this can be used to refresh his
8 recollection like I did. And I do not think it is inadmissible
9 because of the claim of hearsay.

10 THE COURT: Well, I don't think it is -- I don't
11 think you can admit it right now. But I think you can ask --
12 use it for refreshing his memory so he can understand --
13 testifies to what he understood from this, from -- whatever
14 communications he had with him and elicit more about the
15 conversation.

16 BY MR. KNAPP:

17 Q. What was Mr. Chaney concerned about?

18 A. It seems like he was concerned about the voting machines.

19 Q. What in particular about the voting machines, if you know?

20 A. I don't recollect. But, you know, there has been various
21 theories that conservative folks kind of, you know, hung on to.
22 We were getting -- we were getting a lot of this sort of stuff
23 around then. So --

24 Q. Okay. You were getting a lot of communications about
25 machine issues in November of 2020?

1 **A.** We -- I would say that that is accurate. I mean, there
2 was -- I was getting a lot of -- some pretty quirky stuff.

3 **Q.** Now, you recall also that at about this time,
4 December 4th, Coffee County Board of Elections refused to
5 certify the vote of the Coffee County results; is that correct?

6 **A.** I would assume so.

7 **Q.** Do you not recall that?

8 **A.** I don't recall the certification. I know that at some
9 point they refused to certify.

10 **Q.** Okay.

11 **A.** I can't tell you when, where, or why. But ...

12 **Q.** Of the 158 counties in the state in November of 2020, did
13 any of them refuse to certify their election results?

14 **A.** I'm not sure.

15 **Q.** Okay.

16 **A.** I would assume not.

17 **Q.** You cannot recall any as you sit here?

18 **A.** I cannot recall the specifics.

19 **Q.** It was an aberration when a county board of elections
20 refuses to certify the results of a presidential election,
21 wouldn't you say?

22 MR. TYSON: Again, Your Honor, objection. I think
23 Mr. Sinners has testified he is not sure of this. So I don't
24 think he can testify to whether it was an aberration or not.
25 There is just no foundation.

1 THE COURT: You're not sure whether they did or did
2 not certify the election results? Is that what you are saying?

3 THE WITNESS: No. I believe that Coffee County
4 initially did not certify the results.

5 THE COURT: Okay. And was that aberrational or not,
6 in your experience?

7 THE WITNESS: That would be unusual.

8 THE COURT: Thank you.

9 BY MR. KNAPP:

10 Q. Now, are you aware that Misty Hampton, at some point,
11 posted on YouTube a video about her concerns about Coffee
12 County election in November of 2020?

13 A. Are you referring to like the Sidney Powell video?

14 Q. Yes.

15 A. I'm aware of that. Yeah. I didn't know Misty posted that
16 originally. But semantics. I'm aware of that video.

17 Q. So I just wanted to understand. Ms. Hampton did not have
18 any discussions with you about the propriety of posting such a
19 video on the internet?

20 A. I did not have anything to do with that video.

21 Q. Okay. Now, isn't it true that you flew with Alex Kaufman
22 to Coffee County in -- on or about December 12th, 2020?

23 A. As a result of media reports and a lot of attention and a
24 lot of discussion about Coffee County, Alex asked me to travel
25 with him to Coffee County in order to collect statements or

1 affidavits and assist him with that of voters and a specific
2 reporter -- Robert Preston I think was his name on -- yeah, on
3 December 12th.

4 **Q.** Okay. And Alex Kaufman was the deputy general of the
5 Georgia Republican party at the time?

6 **A.** Deputy general counsel, yes, sir.

7 **Q.** And a lawyer?

8 **A.** And a lawyer, yes, sir.

9 **Q.** Now, what role did you expect to play in this collection
10 of statements and affidavits?

11 **A.** He needed a notary and also indicated that, you know, he
12 kind of needed an assistant, you know, kind of an admin with
13 him to help out. So yeah, I agreed.

14 **Q.** Have you ever flown with Mr. Kaufman before?

15 **A.** I don't believe so.

16 **Q.** And he was actually copilot of the chartered plane?

17 **A.** It was a like single engine prop plane. And yeah, he is a
18 pilot. So he made all those logistical arrangements and wanted
19 to fly down.

20 **Q.** And Mr. Kaufman was a member of the Fox Rothschild law
21 firm at the time, was he not?

22 **A.** At the time.

23 **Q.** Yeah. And that firm is almost 1,000 lawyers. Are you
24 aware of that?

25 **A.** I know it is a large firm.

1 MR. TYSON: Objection. I just don't know where --
2 relevance where we're just talking about the size of Fox
3 Rothschild as part of this examination.

4 MR. KNAPP: I'll show. I'll show.

5 BY MR. KNAPP:

6 **Q.** Do you think Mr. Kaufman had the ability to find someone
7 from his law firm to come help notarize statements in Coffee
8 County on December the 12th when that flight took off from here
9 in Atlanta and went down there?

10 MR. TYSON: Again, objection. This is speculation on
11 what Mr. Kaufman may or may not have been able to do.

12 THE COURT: Well, maybe you could create some
13 foundation for that if you are going to pursue that.

14 BY MR. KNAPP:

15 **Q.** Well, in fact, you did notarize some statements while you
16 were down there, did you not, Mr. Sinners?

17 **A.** I'm waiting for --

18 THE COURT: He just jumped.

19 THE WITNESS: I don't mind answering that last
20 question. This was not in, to my understanding, Kaufman's role
21 with Fox Rothschild. This was his role with the Georgia
22 Republican party. So I don't think it would have been
23 appropriate for him to bring someone from his law firm.

24 BY MR. KNAPP:

25 **Q.** Okay. So back to my question.

1 Was it your expectation that you would be notarizing the
2 affidavits and statements of people as you -- when you arrived
3 in Coffee County?

4 **A.** Yes.

5 **Q.** Okay. And are you aware of the Shawn Still lawsuit?

6 **A.** I'm aware of it.

7 **Q.** Okay. At this point in time, on December 12th, were you
8 aware that Mr. Still was contemplating a lawsuit against the
9 Secretary of State to seek to decertify the results of the
10 Coffee County election in November of 2020?

11 **A.** On the 12th of November?

12 **Q.** Yes.

13 December.

14 **A.** Or December.

15 I don't believe that Shawn was -- that I had heard of
16 anything to do with Shawn until we got back. So I don't think
17 that would be accurate.

18 **Q.** Now, you referred to Mr. Still as Shawn. When did you
19 first meet Mr. Still?

20 **A.** Probably the summer before. He was a high -- I guess you
21 would say a high-ranking member of the Georgia Republican
22 party. He had been in the office a number of times. I knew
23 Shawn Still at that point.

24 **Q.** Okay. Let me -- turn, if you would, to -- I think there
25 is a Tab Number 5, Verified Petition for Emergency Injunctive

1 and Declaratory Relief.

2 **A.** Sure.

3 **Q.** Have you ever seen this document before?

4 **A.** One moment.

5 **Q.** Sure. Take your time.

6 **A.** I think there was something in here I notarized. But I
7 can't say for sure if I have read the lawsuit or not.

8 **Q.** Okay. On Pages 52 through 54 of that document, which I
9 premarked with a yellow -- is there a little yellow tab?

10 **A.** Sure.

11 **Q.** Why don't you turn to that.

12 **A.** Yeah.

13 **Q.** Do you recognize that part of the Still complaint,
14 Pages 52 through 54?

15 **A.** Yes.

16 **Q.** Describe for the record what that is, please.

17 **A.** This is the affidavit of Alyssa Hope Taylor.

18 **Q.** Okay. And is there a notarization found on that
19 affidavit?

20 **A.** There is.

21 **Q.** And do you recognize the signature of the affiant?

22 **A.** That is me.

23 **Q.** Okay.

24 **A.** Or the --

25 **Q.** Of the notary. Excuse me.

1 **A.** Of the notary, yeah. Yes, sir.

2 **Q.** Is it dated?

3 **A.** December -- December 12, 2020.

4 **Q.** Okay. And is that your true and correct signature as
5 reflected there?

6 **A.** I remember notarizing this.

7 **Q.** Okay. Turn the page to the next affidavit.

8 Do you recognize this particular affidavit on behalf of
9 Ms. Cecilia O'Steen?

10 **A.** Yes. Same. I recognize this.

11 **Q.** And again, at the bottom it looks like your handwriting.
12 Is that your signature?

13 MR. TYSON: Your Honor, objection. If we're going to
14 discuss this document, I think we need to get it admitted. I
15 don't know if Mr. Knapp is trying to lay a foundation here or
16 what we're doing. But we're going through the document
17 substantively.

18 MR. KNAPP: I'll move for the admission of Pages 52
19 through 54 of the Verified Petition for Emergency Injunctive
20 Relief, Defendants' Trial Exhibit 297.

21 MR. TYSON: Your Honor, we would object on the basis
22 of relevance in terms of this litigation filed in Fulton
23 County. The only connection to Mr. Sinners is his role as a
24 notary, at least as the testimony has revealed so far. No
25 basis for that in terms of fact.

1 In addition, if a portion of this document is going
2 to be admitted, we would submit under the rule of completeness
3 the whole thing needs to come in, not just a portion.

4 MR. KNAPP: I'm more than happy to have the whole
5 document come in, Your Honor. It is a public record.

6 MR. TYSON: Lastly, Your Honor, the information
7 contained in here also is hearsay. Ms. Taylor and
8 Ms. O'Steen -- Ms. O'Steen are not here and there are
9 statements in here. So we would also object on the basis of
10 hearsay to what is contained in the document.

11 THE COURT: It doesn't appear, to me, that he is
12 seeking to introduce the documents for the truth of what -- or
13 accuracy of the information contained in it. And the
14 defendants had it as a trial exhibit.

15 But I think -- my understanding -- and maybe I'm
16 wrong -- is that he's using the affidavits, the date and the
17 fact that they were obtained, for purposes of describing the
18 course of events --

19 MR. KNAPP: That's correct, Your Honor.

20 THE COURT: -- from this witness' perspective and
21 experience. For that limited purpose, it is allowed. There
22 might be other purposes later that are articulated, but that is
23 what I understand it to be.

24 So the entire document, so that there is no problem
25 about -- question about that we are looking only at parts of

1 it. But most of it is just simply -- it is the fact of its
2 filing that -- and the collection of the affidavits and the
3 signatures of this witness that seem particularly relevant
4 here. I don't know what else might be. But since defense
5 counsel --

6 MR. KNAPP: I'm just trying to prove the course of
7 conduct and the fact of communication between Mr. Sinners and
8 these people that are pursuing this lawsuit.

9 THE COURT: All right. 297 is admitted. But my
10 understanding is what you are trying to focus on is those
11 affidavits that you have identified and his having signed on
12 them verifying the signatures.

13 MR. KNAPP: Thank you, Your Honor.

14 BY MR. KNAPP:

15 Q. Mr. Sinners, do you recall that this lawsuit was dropped
16 in January of 2021?

17 A. I believe -- you mean -- oh, like --

18 Q. Sinners. I mean -- excuse me -- the Still suit was
19 withdrawn in January of 2021.

20 A. I believe most of the litigation was. I can't speak to
21 every single one. But I would assume so.

22 Q. Do you have any recollection of when that happened?

23 A. I think right after the runoff.

24 Q. Runoff was in the first week of January?

25 A. Yeah. I think it was in the first week or something.

1 Yeah.

2 **Q.** And at that same time, there was also access to the Coffee
3 County Board of Elections on January 7th by a firm called
4 SullivanStrickler.

5 Are you aware of that event?

6 MR. TYSON: I'll just object -- I'm sorry. Mr. Knapp
7 asked if he was aware. I'll withdraw that.

8 THE COURT: Thank you.

9 THE WITNESS: I was not aware then. But I'm aware
10 now, yes, sir.

11 BY MR. KNAPP:

12 **Q.** Okay. Are you aware now that the Still lawsuit was
13 dropped the same day that that access was given to
14 SullivanStrickler by certain people in Coffee County?

15 **A.** On the 7th. Okay. Yes.

16 THE COURT: I'm sorry?

17 THE WITNESS: I think that was the 7th.

18 BY MR. KNAPP:

19 **Q.** Yes. They were both on the 7th?

20 **A.** Yes.

21 **Q.** Okay. And on that day, did you get a phone call from
22 either Eric Chaney or Misty Hall about what was going on in the
23 Coffee County election office?

24 **A.** I did not get a call from anyone about the
25 SullivanStrickler-related events. I didn't know about them.

1 Q. Is your cell number

2 A. Yes, sir.

3 Q. Okay. Do you have any reason to understand why Eric
4 Chaney might be providing that number to Misty Hall on
5 January 7th?

6 MR. TYSON: Objection, Your Honor. I don't think we
7 have a foundation for Mr. Chaney providing anything to Ms. Hall
8 at this point, or Ms. Hampton at this point. I would also
9 request that for purposes of the transcript, Mr. Sinners' cell
10 phone not be made part of the public transcript.

11 THE COURT: That request as to the -- we'll make sure
12 that the transcript does not reflect his number.

13 Do you want to lay a foundation? Do you have
14 anything to lay a foundation for the question? I'm sorry. I
15 didn't speak loud enough.

16 Mr. Tyson's objection was, in part, that you hadn't
17 laid a foundation for asking about whether -- this provision of
18 the telephone number.

19 MR. KNAPP: Okay. Let me see here.

20 THE COURT: So you would need to address it.

21 BY MR. KNAPP:

22 Q. Is there also, in your notebook, an exhibit beyond the
23 complaint?

24 THE COURT: Number 6, are you saying?

25 MR. KNAPP: Number 6.

1 BY MR. KNAPP:

2 Q. And this is -- appears to be a series of text messages.
3 Would you turn to -- let's see.

4 MR. KNAPP: May I approach, Your Honor?

5 THE COURT: Yes.

6 THE WITNESS: There's an Amazon order.

7 BY MR. KNAPP:

8 Q. All kinds of important stuff.

9 Let's see. If you turn to Page 23 of 24.

10 Do you see that?

11 A. Sure.

12 Q. At the top there is -- in a text bubble is a phone number.

13 MR. TYSON: Your Honor, I'm just going to object to
14 this line of questions. We're looking at a document that does
15 not indicate Mr. Sinners was a participant in this
16 conversation. To ask questions about this, it is not clear who
17 the conversation --

18 THE COURT: Why don't we let him try to lay a
19 foundation for it before you start saying what is wrong with
20 it. All right?

21 MR. KNAPP: Exactly, Your Honor.

22 BY MR. KNAPP:

23 Q. Okay. And did you observe, on this exhibit, which is
24 Defendants' 270 and Plaintiffs' 110, any notations which would
25 indicate to you whose text messages these are?

1 MR. TYSON: Your Honor, objection. I just don't see
2 how we can put a document in front of a witness and say do you
3 see something that would tell you what this is. The witness
4 knows what it is or he doesn't.

5 THE WITNESS: I mean, I see what is highlighted.

6 BY MR. KNAPP:

7 Q. Let's ask Mr. Tyson's question.

8 Do you understand what this -- Defendants' Exhibit 270 is?

9 A. Can you say that again? Sorry.

10 Q. Do you understand what the document is that is before you
11 as Defendants' Exhibit 270?

12 A. It seemed like text messages to or from Eric Chaney.

13 Q. Okay.

14 A. Based on the highlighting.

15 Q. Did you ever provide your personal cell number to Eric
16 Chaney?

17 A. I believe so.

18 Q. And during your deposition, were you asked whether or not
19 you would provide your cell phone records to Mr. Cross?

20 A. Was I -- I believe he asked me.

21 Q. Were you asked to give your cell phone records for
22 January 7, 2021, or the month of January to the plaintiffs and
23 Mr. Cross in your deposition?

24 A. I think he asked if I would or could or should. I don't
25 know. I don't think it is relevant. I had no involvement in

1 this.

2 **Q.** And your response was you declined to provide your
3 personal telephone records for that date, January 7, 2021?

4 **A.** Yes. I would decline that.

5 **Q.** And you didn't bring those records with you here to the
6 court today either, did you?

7 **A.** No.

8 **Q.** Okay. Now -- and on February 1st, 2021, you began your
9 work officially with the Secretary of State's office?

10 **A.** Yes, sir.

11 **Q.** Okay. And have you ever been interviewed by the Secretary
12 of State or any of their investigators about your dealings with
13 Misty Hampton in November and December of 2020?

14 **A.** I would say I've been interviewed regarding the 2020
15 election significantly and probably by every investigative body
16 you could think of.

17 **Q.** Were those investigations prior to being hired by the
18 Secretary of State on February 1st, 2021?

19 **A.** No.

20 **Q.** Okay. And were you interviewed by these investigators or
21 the Secretary of State about your flight with Alex Kaufman to
22 Coffee County in December of 2020?

23 **A.** I think at some point it has come up.

24 **Q.** Was that communication prior to being hired by the
25 Secretary of State's office?

1 **A.** Can you rephrase?

2 Was which -- the question -- can you rephrase? Sorry. I
3 don't understand your question.

4 **Q.** You were going to work -- I assume you applied for this
5 position?

6 **A.** I discussed it with the office.

7 **Q.** And who did you discuss a potential position in the
8 Secretary of State's office?

9 **A.** The first was Jordan Fuchs.

10 **Q.** Okay. And where did it go from there?

11 **A.** I interviewed. I then interviewed, I think, with the
12 whole office. And -- yeah. Started. They needed help. They
13 needed a Trump whisperer, if you will.

14 **Q.** When you say you interviewed with the whole office, did
15 you interview with the Secretary of State Raffensperger?

16 **A.** I am not sure.

17 **Q.** Had you met Secretary of State Raffensperger by the time
18 you were retained by the Secretary of State in February of
19 2021?

20 **A.** Yes.

21 **Q.** On how many occasions?

22 **A.** Once or more than that.

23 **Q.** And did you advise the people you were talking to in the
24 Secretary of State's office that you had had dealings in the
25 Shawn Still suit by notarizing affidavits that were attached to

1 that suit which was filed against Secretary of State
2 Raffensperger?

3 MR. TYSON: Objection, Your Honor. This has gone on
4 for a little while. I still fail to see the relevance here of
5 the hiring of Mr. Sinners related to his functioning as a
6 notary for an affidavit.

7 MR. KNAPP: In a lawsuit pending against the
8 Secretary to decertify the election results of Coffee County.

9 THE COURT: I'm going to allow it.

10 Go ahead.

11 THE WITNESS: What is your question? Did I discuss
12 being a notary --

13 BY MR. KNAPP:

14 **Q.** Right.

15 **A.** -- on an affidavit with the Secretary's office?

16 **Q.** Right.

17 **A.** No.

18 **Q.** You were interviewing for a job with the Secretary of
19 State who is responsible for elections, who's had this
20 publicity about the election of 2020 and all the controversy
21 about it, and you are about to go into their employment.

22 Do you think it is appropriate for you to disclose that,
23 hey, I might have some background here you need to know about
24 before I come work for y'all so I don't cause embarrassment?

25 MR. TYSON: Again, Your Honor, same relevance

1 objection and asked and answered. He has already testified he
2 didn't provide that information.

3 THE COURT: I think that is sufficient. I think you
4 need to move on. I mean, there may be other things you want to
5 ask about that. But now you're asking about did he think about
6 it. I mean, that takes us off on another route.

7 MR. KNAPP: One final question, Your Honor.

8 THE COURT: Okay.

9 BY MR. KNAPP:

10 **Q.** This phone number we've been talking about, was that your
11 phone number on January 7, 2021?

12 **A.** The one at the doc -- yes, that is my phone number.

13 MR. KNAPP: I have no further questions, Your Honor.

14 THE COURT: Thank you.

15 MR. TYSON: We have no questions for Mr. Sinners,
16 Your Honor.

17 THE COURT: All right. Is this witness excused, or
18 is he subject to re-call?

19 MR. TYSON: He may be subject to re-call in our case,
20 Your Honor.

21 THE COURT: All right. So please don't discuss your
22 testimony with anyone in the event you're going to be re-called
23 and don't -- or somebody else that you know may be called as a
24 witness here. All right.

25 THE WITNESS: Thank you, Your Honor. I appreciate

1 it.

2 THE COURT: Who is your next witness?

3 MR. SPARKS: Your Honor, the plaintiffs call Michael
4 Barnes.

5 COURTROOM DEPUTY CLERK: If you would please raise
6 your right hand.

7 **(Witness sworn)**

8 COURTROOM DEPUTY CLERK: Please have a seat.

9 If you would please state your name and spell your
10 full name for the record.

11 THE WITNESS: It is Michael Barnes. Michael,
12 M-I-C-H-A-E-L. Barnes, B-A-R-N-E-S.

13 Whereupon,

14 MICHAEL BARNES,

15 after having been first duly sworn, testified as follows:

16 CROSS-EXAMINATION

17 BY MR. SPARKS:

18 **Q.** Good morning, Mr. Barnes.

19 **A.** Good morning.

20 **Q.** My name is Adam Sparks. I'm an attorney for plaintiffs.

21 It is nice to see you in the courtroom again.

22 **A.** Nice to see you.

23 MR. SPARKS: Your Honor, to clarify for the record,
24 this will be an adverse direct examination.

25 THE COURT: Okay. Thank you.

1 BY MR. SPARKS:

2 Q. Mr. Barnes, you're the director for the Center for
3 Election Systems at the Secretary of State's office. Do I have
4 that right?

5 A. Yes, sir.

6 Q. And if I refer to the Center for Election Systems as CES,
7 will you understand what I mean?

8 A. Yes, sir.

9 But for clarification purposes, there are -- there have
10 been multiple CESs. So we want to make sure that we're
11 speaking of the right one in the right way.

12 Q. Yes, sir. Let's clarify that now.

13 Up until December 31st, 2017, CES was housed at Kennesaw
14 State University; is that correct?

15 A. Yes.

16 THE COURT: Just slow down.

17 MR. KNAPP: Slow down.

18 MR. SPARKS: My apologies, Your Honor.

19 My apologies, Madam Court Reporter.

20 BY MR. SPARKS:

21 Q. From January 1st, 2018, forward to the present day, CES is
22 housed within the Secretary of State's office for the state of
23 Georgia; is that correct?

24 A. That is correct.

25 Q. All right. Now, while I'm at it, if I refer to a Dominion

1 ICX electronic ballot-marking device as a BMD, will you
2 understand what I mean?

3 **A.** Yes, sir.

4 **Q.** Thank you.

5 Just briefly, you have a Bachelor of Arts from the
6 University of Georgia; correct?

7 **A.** Yes, sir. That is correct.

8 **Q.** Thank you. And go Dawgs.

9 You also have a master's of public administration from
10 Georgia State University?

11 **A.** That is correct.

12 **Q.** All right. That is a concentration in public policy
13 analysis; right?

14 **A.** That is correct.

15 **Q.** Have I missed any degrees that you have?

16 **A.** Last I checked those are the only two I have, yes, sir.

17 **Q.** All right. And no certifications relevant, any additional
18 certifications relevant to your job?

19 **A.** None that I recall.

20 **Q.** All right. And now, you've worked in the Secretary of
21 State's office from approximately 1998 to 2005; is that right?

22 **A.** I started in the Secretary of State's office in August of
23 1998 and stayed there until June of 2005. Yes.

24 **Q.** Sure.

25 So since graduating high school, you've always worked one

1 way or another in elections; is that right?

2 **A.** Once I graduated high school and attended college, once I
3 left the University with my degree, I entered into the campaign
4 realm, worked in a campaign for a year in 1997, and then
5 transitioned to the Secretary of State's office in '98.

6 **Q.** That campaign was for Secretary Massey; is that right?

7 **A.** That is correct.

8 **Q.** Sure.

9 Now, again, in your current role as director of CES, you
10 oversee daily operations of the center; is that fair?

11 **A.** Yes.

12 **Q.** All right. You manage its ballot building operations?

13 **A.** I oversee its ballot building operations, yes.

14 **Q.** You manage dataset building?

15 **A.** Say again.

16 **Q.** You manage building of datasets?

17 **A.** I manage the process where the -- what we call the
18 election projects in today's environment are assembled and then
19 distributed to the counties.

20 **Q.** And you also manage training responsibilities, education
21 for local election officials?

22 **A.** Those training classes that we execute, yes, I oversee
23 their -- I help develop them and line up schedules for counties
24 to attend. Yes.

25 **Q.** So just for clarification, you said you line up schedules;

1 is that right?

2 **A.** Well, we set up timelines of when we will be able to
3 execute those training classes.

4 **Q.** Sure.

5 But you do actually execute training classes as well;
6 correct?

7 **A.** I used to do a lot more of the training classes. Since
8 the transition into the Secretary of State's office, I have not
9 been doing as much hands-on training in those training classes.
10 I have let my -- I have let people that work for me take on
11 that role.

12 **Q.** So your team does some training?

13 **A.** Yes.

14 **Q.** Thank you.

15 And you have no responsibility, no direct responsibility
16 for cybersecurity; correct?

17 **A.** Correct.

18 **Q.** You described your role as the head of CES as to become a
19 high-level user of the voter system that the state of Georgia
20 has selected for its use; correct?

21 **A.** Yes.

22 **Q.** Just for my education, what does becoming a high-level
23 user mean?

24 **A.** In my opinion, the way I phrase it, is someone that
25 understands the operations of the applications that are

1 involved. By no means am I an expert in those applications.
2 But I am a good user of the applications so that I can help
3 others understand the use of the application and execute the
4 tasks that they are obligated to execute.

5 **Q.** Being able to run a cash register but not being able to
6 explain the software that lets it do the math; is that fair?

7 **A.** That might be a little bit of an oversimplification. It
8 is -- we all use word processing programs. But we all use them
9 at different levels. The way I phrase it is I know maybe a
10 little bit more about what the menu options are within the
11 application.

12 **Q.** So I want to turn for a moment about what CES doesn't do
13 as well. We just discussed you don't have direct
14 responsibility for cybersecurity.

15 And you cannot speak to how malware operates; correct?

16 **A.** Correct.

17 **Q.** And you're also not aware of how malware can be designed
18 to defeat logic and accuracy testing on voting equipment;
19 right?

20 **A.** Correct.

21 THE COURT: Right. Remember, don't go so fast.

22 MR. SPARKS: Yes, Your Honor. Thank you.

23 BY MR. SPARKS:

24 **Q.** You have never seen a demonstration of malware designed
25 for voting machines that defeats a hash test; is that right?

1 **A.** I have not.

2 **Q.** Now, Mr. Barnes, it was your belief in 2020 that logic and
3 accuracy testing would detect malware in Georgia voting
4 equipment, wasn't it?

5 **A.** I believe I did state that, yes, sir.

6 **Q.** And you also believed then that logic and accuracy testing
7 would detect any other compromise of the voting equipment in
8 Georgia; isn't that so?

9 **A.** I believe my answers in those questions were all relating
10 to that logic and accuracy testing as performed properly would
11 isolate if the system was functioning properly or not.

12 **Q.** Didn't you say that it was to give some level of
13 confidence that the voting system was matching what had been
14 certified for use by the State previously?

15 THE COURT: All right. You're just talking too fast,
16 all right, for me to absorb even so. Much less so -- fine in
17 conversation but you're far enough away, so just speak slower.
18 Ask the question again. Okay? Thank you.

19 MR. SPARKS: Of course, Your Honor.

20 BY MR. SPARKS:

21 **Q.** Didn't you say that the test the counties undertake was
22 meant to give them some level of confidence that the voting
23 system was matching what had been certified for use by the
24 State previously?

25 **A.** I believe what I was referencing again in answering was

1 that the logic and accuracy testing that is undertook before
2 each and every election is to verify that the voting system is
3 functioning properly. That if you put forth a vote for the
4 first candidate in the first contest in a test environment that
5 the scanner, the device that would be tabulating the vote would
6 show that result and report that result.

7 That logic and accuracy testing was done to basically
8 check the system prior to it being used in an election to make
9 sure that it is processing information properly.

10 **Q.** Checking the system in a test environment; correct?

11 **A.** Yes.

12 **Q.** Do you remember Logan Lamb?

13 **A.** I remember that name, yes, sir.

14 **Q.** Do you remember he was able to access the Kennesaw State
15 University server that held voter information without needing
16 any password or authorization?

17 **A.** I remember that Mr. Lamb reached out to the Kennesaw
18 Center for Election Systems at some time and made reference to
19 accessing a web server that the Center for Election Systems
20 used to distribute information to individual counties.

21 And on that box, there was voter registration information
22 that the Center for Election Systems at Kennesaw State had in
23 order to build what were the data files for the ExpressPoll,
24 which was the pollbook in use at that time. I believe it was
25 2016, 2017.

1 Q. So he was able to access that voter information without
2 needing some sort of password or other authorization from CES?

3 A. I do not know how he accessed it. I can only speak to the
4 fact that he stated that he did.

5 And that statement was not to me. It was made to my boss
6 at the time.

7 Q. Because Mr. Lamb was not part of the KSU at the time;
8 correct?

9 A. To my knowledge.

10 Q. And he certainly wasn't part of CES at the time?

11 A. He was not a member of CES.

12 Q. But CES was responsible for that server at the time; yes?

13 A. Kennesaw -- the Center for Election Systems at Kennesaw
14 State was responsible for that particular device, yes.

15 Q. And back in 2018 you weren't able to explain just what CES
16 did to get to the bottom of how all sorts of personal voter
17 information was available to Mr. Lamb; isn't that right?

18 A. That is correct.

19 Q. And you couldn't explain how such information was still
20 available to Mr. Lamb the full six months after he notified CES
21 in the first instance; isn't that true?

22 A. That's correct.

23 MR. TYSON: I would object on the basis that we just
24 don't have foundation for this additional six-month period. I
25 think that can be laid.

1 THE COURT: Now I can't understand you either.

2 MR. TYSON: I'm sorry.

3 I'm objecting on the basis that I don't think there
4 is a foundation for the additional six-month period of
5 Mr. Lamb's access. I think that could be laid. It hasn't been
6 yet.

7 THE COURT: Okay. Go ahead and lay it.

8 BY MR. SPARKS:

9 Q. Was there a period of time after Mr. Lamb notified CES
10 that he could gain this access we've discussed where he or an
11 associate reached out to CES again?

12 A. To be honest, I don't remember the full timeline of events
13 surrounding that scenario.

14 Q. Do you remember whether there were at least two outreaches
15 from Mr. Lamb or an associate?

16 A. My recollection is that there were only two outreaches
17 from Mr. Lamb.

18 Q. Were they months apart?

19 A. I believe they were. But how many months, I do not -- I
20 do not remember.

21 Q. But the second such notification included the message that
22 the communicator could still access the voter information of
23 concern? Do I have that right?

24 A. Again, I don't remember what was stated at that time. It
25 was never stated directly to me. So I don't know what the

1 message was.

2 **Q.** And the KSU server was wiped after this very litigation
3 was filed over five years ago; isn't that right?

4 **MR. TYSON:** I'll object, Your Honor, just in terms of
5 relevance. I mean, we have a whole new system. Mr. Barnes'
6 testimony is that this is about ExpressPolls. You dismissed
7 claims about DREs and the GEMS system. I don't think there is
8 relevance to this line of questioning.

9 **MR. SPARKS:** Your Honor has already pointed out that
10 these facts that we're seeking to admit here at trial may be
11 part of a pattern of behavior on behalf of the State, its
12 affiliates and election security measures. I think this is
13 directly relevant to our claims.

14 **THE COURT:** I think it is relevant to the issues of
15 handling of security long-term. It doesn't -- so just for that
16 purpose, it is allowed.

17 **BY MR. SPARKS:**

18 **Q.** Do you need me to repeat my question, Mr. Barnes?

19 **A.** Yes, please.

20 **Q.** The KSU server was wiped after this very litigation was
21 filed over five years ago; isn't that correct?

22 **A.** I believe at the time that the server had been taken
23 possession of by Kennesaw State University's IT department.
24 And I do believe that Kennesaw State University's IT department
25 wiped the server. But I don't know the timeline in which those

1 events took place.

2 **Q.** You're saying that you don't remember asserting that the
3 server was wiped after this litigation was filed?

4 **A.** I don't know when they actually wiped the server. Whether
5 it was -- whether in line with the litigation timeline.

6 **Q.** Okay. Would it help you to maybe refresh your
7 recollection with your deposition testimony? Would that be
8 useful to you?

9 **A.** Certainly.

10 MR. SPARKS: Your Honor, may I approach the witness?

11 THE COURT: Yes, you may.

12 MR. SPARKS: Would Your Honor like a copy?

13 THE COURT: I think I'm familiar with it.

14 MR. SPARKS: I suspect so.

15 Thank you.

16 BY MR. SPARKS:

17 **Q.** Mr. Barnes, I've just handed you a copy of your hearing
18 testimony at a hearing in this case on September 12, 2018.

19 Could I ask you to turn to Page 225, Lines 3 through 10,
20 and read it to yourself, please.

21 **A.** Page 225.

22 **Q.** Yes, sir. And Lines 3 -- is that correct?

23 Starting at Lines 3 through 10. You needn't read it
24 aloud. Just to yourself to review.

25 **A.** Okay.

1 Q. Does that refresh your recollection about the timeline,
2 sir?

3 A. It does help, yes, sir.

4 Q. Sure.

5 Does it also refresh your recollection that then Secretary
6 Kemp's office characterized that wipe of the server as, quote,
7 reckless, inexcusable, and inept?

8 MR. TYSON: And I'll just object that that's
9 characterizing the testimony. I think Mr. Sparks can ask that
10 question, but he can't characterize the testimony without using
11 it for impeachment or other purposes.

12 MR. PICO-PRATS: She can't hear you.

13 MR. TYSON: I'm sorry. Do you want me to restate
14 that, Your Honor?

15 Your Honor, I'll just object that Mr. Sparks is
16 characterizing the testimony that he has asked Mr. Barnes to
17 read. I think he can ask the question after he has refreshed
18 his recollection, but I think he would otherwise need to
19 impeach or do something else to rely on that testimony.

20 BY MR. SPARKS:

21 Q. Mr. Barnes, do you recall then Secretary Kemp describing
22 this wipe of the server as reckless, inexcusable, and/or inept?

23 A. I would answer in the same way that I answered in my
24 deposition that I do believe I remember hearing Secretary Kemp
25 use those words.

1 Q. Thank you, sir.

2 MR. SPARKS: May I approach to take that transcript?

3 THE COURT: Yes.

4 MR. SPARKS: Thank you.

5 BY MR. SPARKS:

6 Q. Turning back to CES practices for a moment, sir.

7 Some CES employees have a computer on a private network as
8 opposed to a public-facing network; is that correct?

9 A. Again, I'm going to ask, are we now still talking about
10 Kennesaw State Center for Election Systems or are we talking
11 about Secretary of State Center for Election Systems? Which
12 one?

13 Q. That is a fair clarification, and I appreciate you making
14 it.

15 I'm talking about CES at the Secretary of State's office
16 in early 2022.

17 A. Early 2022?

18 Q. Yes, sir.

19 A. At the Secretary of State Center for Election Systems,
20 yes, we have two separate systems. We have a -- what we call
21 our isolated system, which we use for the building of election
22 projects, which I referenced earlier, ballot building.

23 And then we also have our public-facing systems which we
24 use to communicate with the outside world. It is part of the
25 Secretary of State's internal public network. So yes, at my

1 desk I have two separate computers that are not connected to
2 one another.

3 **Q.** Sure.

4 And we'll come back to ballot building in a moment.

5 During your 2022 deposition, you didn't know whether your
6 private network computers had WiFi or Bluetooth capability;
7 isn't that so?

8 **A.** I believe that was my answer, yes, sir.

9 **Q.** In fact, CES is not responsible for securing its own
10 private network; correct?

11 **A.** The Secretary of State's -- the Center for Election
12 Systems at the Secretary of State's office, our IT
13 infrastructure is managed by the Secretary of State IT
14 division.

15 **Q.** Sure.

16 And CES doesn't even have access to the Dominion server
17 room within the Secretary of State; isn't that right?

18 **A.** The server room that is there within the Center for
19 Election Systems Secretary of State CES, yes, we do not have
20 access to that server room. Only SOS IT do.

21 **Q.** Sure.

22 You mentioned ballot building, so I thought I would turn
23 to that for a moment.

24 Just one moment, please.

25 I'm a little older than I used to be. I do have to mark

1 my place to remember where I'm coming back to.

2 **A.** Understood.

3 **Q.** Thank you for your patience.

4 So when you say ballot building, that means build ballots
5 for use by all 159 counties in Georgia; yes?

6 **A.** That is correct.

7 **Q.** Now, as I understand the process under the BMD election
8 system in Georgia, and as you previously testified in 2022,
9 first you set up one or more isolated computers as state
10 election management servers; is that right?

11 **A.** We have -- in the Secretary of State's Center for Election
12 Systems, we have an isolated environment. And it is a -- it is
13 a server. It is a central CPU computer. And then we have
14 computers that are connected to that central computer.

15 The computers, we call them workstations. The
16 workstations are what are used to use the applications that are
17 part of the voting system. There are various applications that
18 we use to build the election project to build the ballots.

19 **Q.** And you are anticipating my next question, which I
20 appreciate.

21 Is one of those applications the election event design
22 application?

23 **A.** Yes, sir. Election event design, we also call that EED,
24 is used to build the elections project.

25 **Q.** And do you set it up with results, tabulating, and

1 reporting, or RTR, as well?

2 **A.** Results, tabulating, and reporting is another application
3 in the Democracy suite set of applications. And the RTR
4 application is used to accumulate the results that the scanning
5 devices collect during the voting action and tabulate and
6 report on the results.

7 **Q.** And I want to confirm, when you say Democracy suite, you
8 mean D Suite 5.5-A; yes?

9 **A.** The version that we use in the state of Georgia is
10 Democracy Suite 5.5-A, yes.

11 **Q.** Given that setup, you then dedicate one or more people to
12 building election project files for all 159 counties; is that
13 right?

14 **A.** That is correct.

15 **Q.** So just so I'm clear, these were built by CES team members
16 at the State level but then individualized to each of the
17 counties and sent out to each particular county's election
18 office? Am I right so far?

19 **A.** Yes.

20 **Q.** And from there, counties were to install those election
21 projects on their own EMS; is that right?

22 **A.** The -- each individual county will receive their election
23 project from the State. They then have to go through an
24 authorization process, authentication process, where they have
25 to obtain access to the file that the State delivered to them.

1 Once they are -- once that is authenticated, then they are
2 given an access code to extract the file that we have given
3 them. And then that file is then loaded to their election
4 management computer at the county level. And that loads the
5 election project on to their individual device.

6 THE COURT: I'll just stop you for one second. Can
7 you, just for the record, clarify what you mean by an election
8 project?

9 THE WITNESS: Yes, ma'am.

10 An election project is a file, is an electronic file,
11 that contains the various information correlating to the county
12 in question. It outlines all of the county's precincts. It
13 outlines all of the county's voting locations.

14 Within each precinct there is what is called a
15 district combination which are the items -- the political
16 districts that are in play within that precinct. And those
17 items combined together create a ballot style for a given
18 election.

19 And the ballot style contains the contests and the
20 candidates within each contest that is -- then creates the
21 ballot that the voter sees, whether it is on the ballot-marking
22 device or on the optical scan ballot that may be used for
23 mail-out absentee purposes.

24 BY MR. SPARKS:

25 Q. And because the election project contains ballot styles,

1 it also makes its way on to the BMDs; is that correct?

2 **A.** Correct.

3 **Q.** You mentioned devices. Are there any other devices at the
4 county level that the election project files reach, that I
5 haven't mentioned already?

6 **A.** The election project file --

7 **Q.** Hold on. I apologize for interrupting, but just my
8 question was, are there other devices or not, yes or no?

9 **A.** Well, to answer the question, I need to outline the
10 election project sits within the election management computer.
11 It is a file.

12 The election project then creates information that is then
13 transferred to a ballot-marking device. It moves data over to
14 the ballot-marking device. The election project file also
15 creates information that is used to load the optical scanners
16 that are used to tabulate the votes.

17 So the election project file contains all of this
18 information, but the project file itself is not transferred
19 then to a BMD. The project file creates a file that is then
20 transferred to the BMD.

21 **Q.** Thank you. I appreciate the clarification.

22 Did the State retain a copy of each election project it
23 sent out to each county, at least as of February 2020 when you
24 last testified in this case?

25 **A.** Yes.

1 Q. Now, CES did not always build ballots this way; correct?

2 A. Again, we'll go back to the history of Kennesaw State
3 University.

4 Q. I plan to walk through it. I'm thinking about CES at the
5 Secretary's office. This specific process that you just
6 explained to me has not been consistent since January 1st,
7 2018; is that right?

8 A. That is correct.

9 Q. Okay. Dominion built ballots for Georgia on a contract
10 basis between some point in 2019 and July 2021; isn't that so?

11 A. That is correct.

12 Q. And as of 2019, in fact, there were ES&S contractors
13 building ballots outside of the physical confines of CES; isn't
14 that so?

15 A. That is correct.

16 Q. In fact, they were building them on desktop computers at
17 their personal residences?

18 A. I believe they were building them on computers provided by
19 the Secretary of State's office to them for that purpose.

20 Q. At their homes?

21 A. Yes.

22 Q. And you didn't know at the time what protections or
23 security measures the contractors took for their homes while
24 working on those election databases; isn't that so?

25 A. The people that were those contractors were former

1 employees of mine at Kennesaw State University CES. So I had a
2 level of trust in their understanding of the protocols that we
3 have had in place for over a decade in regards to protection of
4 any election project, whether it was a previous voting system
5 election project or the current system.

6 So I entrusted in them to maintain those same standards.

7 **Q.** I appreciate that. But you didn't know what those
8 physical security procedures were?

9 **A.** I did not visit their individual houses and check and look
10 at their systems in operation at that location.

11 **Q.** So that is a no; correct?

12 **A.** Correct.

13 **Q.** Let's talk about the BMD system for a moment.

14 Now, you were involved with the transition from the
15 enjoined GEMS DRE system to the BMD system back in 2019 and
16 2020; is that right?

17 **A.** I was -- I was a member of the Secretary of State's office
18 involved in that transition, yes.

19 **Q.** When the BMD system was rolled out back then, you did not
20 specifically prohibit county election officials from using USB
21 drives that they had previously used with the prior system, the
22 enjoined system, with the new voting equipment; isn't that
23 right?

24 MR. TYSON: Your Honor, I'll object just to -- the
25 use of the term prohibit implies that from a legal perspective

1 that Mr. Barnes had some authority to control counties. So I
2 would object on that basis.

3 MR. SPARKS: I think Mr. Barnes is capable of
4 understanding what prohibit means when he is the director of
5 CES involved in the transition with the new equipment.

6 THE COURT: Are you asking him as a matter of law or
7 are you just asking as a matter of the management practices?

8 MR. SPARKS: I'm asking in his capacity as director
9 of CES involved in this transition managing aspects of the
10 transition.

11 THE COURT: Could he -- did he prohibit this?

12 MR. SPARKS: Yes, Your Honor.

13 THE COURT: With that understanding, you may go
14 ahead.

15 MR. SPARKS: Do you need me to repeat the question?

16 THE COURT: Yes.

17 BY MR. SPARKS:

18 **Q.** When the BMD system was rolled out back then, you did not
19 specifically prohibit county election officials from using USB
20 drives that had previously been used to the enjoined GEMS DRE
21 system with that voting equipment, with the new voting
22 equipment you were helping to roll out; isn't that correct?

23 **A.** What we went through in the transition period of late
24 20 -- 2019 to 2020 in some locations -- we had a few counties
25 that executed a pilot project, I believe in 2020, using the

1 new -- or late 2019 using the new BMD system.

2 Those counties had to report election night results back
3 to the State because I believe there was a special election for
4 a state house in southwest Georgia, I believe.

5 And in that exercise in the previous system, in the GEMS
6 system, the State had provided to the counties a lockable USB
7 drive that was used to transfer the election night reporting
8 file that would be generated from the GEMS system and uploaded
9 into the State's election night reporting system.

10 And in the transition of the new system to the BMD system,
11 I believe we did inform the counties that if they wanted to use
12 that State-provided USB drive to move the election night
13 reporting file from the new system back to the election -- to
14 the ENR system, the election night reporting system, they could
15 do so.

16 **Q.** You brought up that southwest Georgia election.

17 MR. SPARKS: So if I may, Your Honor, may I approach
18 the witness with an exhibit binder?

19 THE COURT: Yes.

20 BY MR. SPARKS:

21 **Q.** Mr. Barnes, I've just handed you some paperwork right
22 there. I won't make you take a test on it all at once.
23 However, I would like you to turn to Tab 5 of the binder that
24 I've just given you.

25 And please review what we have previously marked as

1 Curling Plaintiffs' Trial Exhibit 33.

2 **A.** Okay.

3 **Q.** Do you recognize this document?

4 **A.** It looks like an email between myself and Scott Tucker at
5 Dominion vote.

6 **Q.** And who is Scott Tucker?

7 **A.** Scott was, I believe, one of the project leads for the
8 rollout of the new voting system that was procured from
9 Dominion by the State.

10 **Q.** And looking at the second email in the chain next to your
11 name, email domain with SOS.GA.GOV, was that your work email at
12 the time?

13 **A.** Yes.

14 **Q.** And you see the subject here says, L&A export to State?

15 **A.** Yes.

16 **Q.** And this top email was sent on January 15, 2020?

17 **A.** Yes.

18 **Q.** Did you send this email in the ordinary course of your
19 work as the director for CES?

20 **A.** I would believe so, yes.

21 **Q.** And you would have received the email immediately below in
22 the thread from Mr. Tucker also in the ordinary course of your
23 work?

24 **A.** Yes.

25 MR. SPARKS: Your Honor, we move admission of Curling

1 Plaintiffs' Trial Exhibit 33.

2 MR. TYSON: Your Honor, the same objection just in
3 terms of the only portion of this email from Mr. Barnes is the
4 very top portion. The remainder is statements by Dominion.
5 Dominion is not here. So we would object on hearsay grounds.

6 MR. SPARKS: Two things. First of all, Mr. Barnes
7 just mentioned the election to which I believe this email
8 refers. And he can clarify that in a moment.

9 And second, there were actually no objections flagged
10 in the exhibit list that we filed with the pretrial order in
11 this case. So I'm a little surprised to hear a new one today.

12 MR. TYSON: Your Honor, I apologize Mr. Sparks is
13 correct as to the pretrial order. So with that understanding.

14 THE COURT: Well, okay. I'm going to allow it. But
15 obviously it is -- the whole point is that it is his -- that
16 Mr. Barnes' email itself is a response to the question posed
17 below. So it is not really a question of the accuracy of it or
18 what it represents -- the true statement of Dedrick Smith,
19 since it is obviously being responded to. Maybe that was in
20 your mind when you didn't object.

21 MR. SPARKS: I appreciate Your Honor's statement and
22 understanding. I tend to --

23 THE COURT: All right. It is admitted.

24 MR. SPARKS: Thank you, Your Honor.

25

1 BY MR. SPARKS:

2 Q. Mr. Barnes, does this email perhaps refer to the election
3 of southwest Georgia in early 2020 you were just discussing?

4 A. I believe it does.

5 Q. Sure.

6 So here Mr. Tucker is asking whether the State's providing
7 these new USB drives for the counties to send their L&A exports
8 and election day exports to you and asking whether they are
9 going to get them there presumably in time for this special
10 election or should they use the USB drive they had from the
11 previous system; is that fair?

12 A. Yes.

13 Q. And you wrote back, as you just testified, saying that
14 they can use the USB that the State previously provided; yes?

15 A. For that purpose, yes.

16 Q. So in January of 2020, mid BMD rollout, you did inform
17 Dominion that counties could use those USB drives the State
18 provided for use with the prior GEMS DRE system with this
19 brand-new voting equipment; is that right?

20 A. As the email outlines, I said that they could use the
21 previously provided SOS USB drive for the purpose of
22 transferring results, which is a text file that is generated
23 from the program saved to a jump drive and then uploaded to the
24 State's election night reporting system.

25 Q. And to get those results, the USB drive interacts with

1 voting equipment; yes?

2 **A.** It does. It interacts with the election management
3 system. It interacts with the system where the election
4 project resides.

5 **Q.** And as part of this rollout, the EMS in each county was
6 replaced; correct?

7 **A.** Yes. As part of the rollout of the new voting system, the
8 election management computer in each county was replaced with a
9 new device, yes.

10 **Q.** So it follows that you couldn't confirm that all 159
11 counties had not used the previously -- let me try that again.

12 So it follows that you couldn't confirm that all 159
13 counties did not use USB drives that were previously used with
14 the old system when interacting with components of the new
15 system?

16 **A.** I cannot speak to what each individual county has used in
17 use with their new voting system. So no, I cannot speak to
18 that.

19 **Q.** And, in fact, that email shows that you could not confirm
20 that; correct?

21 **A.** Correct.

22 **Q.** But even in 2022 you directed a county election official
23 to reuse memory cards back-to-back in a primary and a runoff;
24 right?

25 **A.** Well, that is not an uncommon act.

1 Q. In a primary and a runoff four weeks apart?

2 A. Yes, sir. That is not an uncommon act.

3 Q. Okay. Let's talk about that a little bit.

4 A. Because you said memory card. And a memory card is used
5 to program a scanner. The scanner is going to be collecting
6 ballots. The ballots are the official record. You have to
7 transfer information from the election management computer via
8 memory card to program the scanner, to tell the scanner what
9 information, how to process the ballot.

10 That is done through the use of the memory card. The
11 memory card collects information. It stores the information
12 that the scanner collects, tabulates. Stores that information.
13 And then post election the information on the memory card is
14 then uploaded through RTR, results, tabulating, reporting, and
15 saved back to the election management computer.

16 And then the election management computer within the
17 election project has the information that was transferred from
18 the scanner via the memory card back to the election project.
19 When you have to get ready for the next election, you have to
20 reprogram the memory cards to process the next election.

21 So that is an action that was undertaken in the old DRE
22 environment, and it is an action that is undertaken today.

23 Q. So you have no problem with reprogramming memory cards
24 used in one election in time for an election a few weeks later?

25 A. I do not.

1 Q. Can you think of any exceptions why that -- can you think
2 of any reasons why that might be a poor idea, or special
3 situations of some sort?

4 A. As with any election, there may be litigation that comes
5 about because of the process. So what --

6 Q. You're referring -- I'm sorry to interrupt. You are
7 referring to election contests?

8 A. Yes. Is that we may have election contests that do come
9 about. We will have an election. There will be an outcome of
10 the election. That outcome may be contested.

11 In those circumstances where counties are involved in
12 election contests, we may direct the county to say out of an
13 abundance of caution, hold on to the memory cards, because what
14 the memory cards retain are all the actions that the tabulator
15 did along with the ballot images that the system retained and
16 the logs in case questions are raised.

17 But if those circumstances are not in place or if you have
18 retained all of the information that are on those cards, you
19 can proceed and move forward to execute the next election with
20 the memory cards that you have.

21 Q. Any other reason come to mind?

22 A. I cannot think of one right now.

23 Q. Could I ask you to turn to Tab 6 in your binder.

24 Don't let me stop you from getting water. But after that.

25 So you'll see there an exhibit that has been marked as

1 Coalition Plaintiffs' Exhibit 55. Take a moment to review the
2 document, please.

3 Do you recognize this document?

4 **A.** I don't recognize it directly. But it is -- was sent to
5 my email address. It does have my signature statement at the
6 bottom. So it would appear to be an email from me.

7 **Q.** Yes.

8 And the top email that shows you sending an email to
9 Rachel Roberts, that is a SOS email address as well; correct?

10 **A.** Correct.

11 **Q.** Sure.

12 And who is Rachel Roberts?

13 **A.** She has a tag line here as being associated with the
14 Coffee County elections office.

15 **Q.** The election supervisor for Coffee County; correct?

16 **A.** I believe she was.

17 **Q.** And you see the subject includes ICC memory cards?

18 **A.** I do.

19 **Q.** And that top email was sent early afternoon on June 1st,
20 2022?

21 **A.** It was.

22 **Q.** And would you have sent this email or did you send this
23 email, rather, in the ordinary course of your work?

24 **A.** I believe so.

25 **Q.** Would you have received the email below from the election

1 supervisor of Coffee County also in the ordinary course of your
2 work?

3 **A.** Yes.

4 **Q.** Okay.

5 MR. SPARKS: Your Honor, we move Coalition
6 Plaintiffs' Trial Exhibit 55 into evidence.

7 MR. TYSON: Your Honor, we would object to the
8 portion from Ms. Roberts. We have no objection to the portion
9 from Mr. Barnes. The portion from Ms. Roberts obviously is a
10 statement by her being offered for the truth. We don't have
11 any problem with Mr. Barnes' answer coming in.

12 THE COURT: Well, I don't know that it is being
13 offered for the truth. She's asking what do I do. That is not
14 truth. I mean, there is other information here.

15 Whether she has enough to hold the runoff is another
16 whole question. That is -- that might be, in fact, what you
17 are saying. But I think she's asking for how do I proceed.
18 Where do I get more memory cards, and that portion of it is --
19 part of the communication is not being admitted for the truth
20 of the matter.

21 Go ahead. 55 is admitted subject to that
22 qualification.

23 MR. SPARKS: Thank you, Your Honor.

24 BY MR. SPARKS:

25 **Q.** So here you are responding to Ms. Roberts' representation

1 letting you know that she does not have enough memory cards to
2 hold a runoff unless Coffee County can clear the data off the
3 ones she has from the May primary and the election; is that
4 right?

5 **A.** In reviewing the email, it's -- she's actually asking
6 about her ICC, which is her central scanning computer. And the
7 central scanning computer actually does not even work with
8 memory cards. It is -- the computer has the data file. You
9 load the data file to the computer. And then the scanner
10 collects information and saves it directly to the computer.

11 **Q.** Respectfully, Mr. Barnes, I'm looking -- and maybe this
12 will help. I'm looking at the second line of Ms. Roberts'
13 email that you received.

14 **A.** No. I see that. But she does ask, Where do I get more
15 memory cards for the ICC?

16 In reading the email now, she's asking about the -- she's
17 referencing the ICC, which is a central scanner, which does not
18 actually use memory cards. I do see that I responded to that
19 to say you can use the cards that you used in May.

20 In my reading of the email at that day, I may have thought
21 she said ICP as opposed to stating ICC. If she was referring
22 to an ICP, which is the scanner used at the precinct, then it
23 was common practice for us to reuse the memory cards.

24 Once the election is closed, once the election has been
25 certified, you can then clear the information from the card and

1 make it ready for the next election.

2 **Q.** So is that -- that would be why there is no additional
3 direction in this email to preserve data on the cards; right?

4 **A.** Correct.

5 **Q.** Even though at the time the subject line says ICC --

6 **A.** Correct.

7 **Q.** -- and it was included --

8 **A.** I was not doing anything different than what we normally
9 practiced.

10 **Q.** So no other alarm bells from this email went off for you,
11 is what you are saying?

12 **A.** None. None.

13 **Q.** In June of 2022?

14 **A.** June of '22.

15 **Q.** Thank you. You can put that back to the side for the
16 moment.

17 Going back to the rollout of the BMD system, do you recall
18 about when that rollout began? We discussed it generally. I'm
19 wondering whether you recall when the kickoff might have been?

20 **A.** I feel like that we started -- went through the
21 procurement process in early calendar year 2019. And I believe
22 the State started executing their agreement with Dominion after
23 the start of the 2020 fiscal year, which would have been July 1
24 of 2019.

25 **Q.** So when would you have started training counties on how to

1 use this new equipment?

2 **A.** Well, we, Center for Election Systems at the Secretary of
3 State, we didn't train counties on how to use the new system.
4 That was a task that was undertook by Dominion as part of their
5 contract with the Secretary of State's office.

6 But in relation to that training that Dominion was
7 obligated to provide, I believe they started that training in
8 September of 2019.

9 **Q.** September of 2019?

10 **A.** I believe.

11 **Q.** Do you know whether that would have been for the initial
12 pilot counties that were trying this out in November of 2019 or
13 for all counties?

14 **A.** I think that those counties may have been met with in
15 August of 2019. But my recollection is a little blurry on
16 those. But around that same -- it would have been very soon
17 after the contract was in place.

18 **Q.** In your experience for this -- with this rollout, when
19 would training have begun for the rest of the counties that
20 were not holding a November 2019 pilot?

21 **A.** Well, in November of 2019 -- or in -- in summer of 2019
22 would have begun the groundwork of trying to educate all 159
23 counties on the new system that was being procured by the
24 State.

25 And at that point, we started receiving equipment in.

1 Dominion was receiving equipment into their facility outside of
2 Smyrna, Georgia, for getting equipment prepared, then getting
3 it tested by the State to validate that what is on the
4 equipment is what is supposed to be on the equipment from an
5 application standpoint.

6 And then it was being distributed from Dominion out into
7 the counties. So the training of counties so they become
8 familiar with the new voting system would have begun -- would
9 have needed to begin in September of 2019 because the State had
10 a planned presidential preference primary in March of 2020.

11 Then, of course, we had a pandemic that started early in
12 2020, and that completely threw everything for major loops.

13 **Q.** If only we all could have forecasted that.

14 **A.** If only we could have forecasted that.

15 **Q.** Right.

16 At the time you were last testifying in this case, back in
17 February 2022, you believed that some counties were still
18 getting to the point of getting sufficient training with the
19 Dominion equipment; right?

20 **A.** I think counties continually go on to be more and more
21 familiar with their voting system. So it would go to figure
22 that in February of '22 I felt like counties were still getting
23 acclimated and learning and learning more about their voting
24 system, yes.

25 **Q.** And some counties contracted with Dominion for tech

1 support even then; correct?

2 **A.** There are still counties today that are contracting with
3 Dominion tech support.

4 **Q.** If I could ask you to turn to Tab 8 in your binder,
5 please, sir.

6 This is document that has previously been marked as
7 Curling Plaintiffs' Exhibit 34.

8 **A.** Okay.

9 **Q.** Have you reviewed the document?

10 **A.** I am -- I am reviewing it.

11 **Q.** I'll wait.

12 **A.** Yes, sir.

13 **Q.** Do you recognize this document?

14 **A.** I see it. I recognize it as an email. The email was not
15 to me directly. I am in the CC line, I believe.

16 **Q.** I think you're in the to line, actually.

17 **A.** Yeah. I am in one of the to lines, yes, sir.

18 **Q.** And according to the document there -- this is from
19 Ms. Johnson who is associated with the Lee County Board of
20 Elections & Registration?

21 **A.** Uh-huh.

22 **Q.** And you see the subject line reads, ENR L&A test upload?

23 **A.** I do.

24 **Q.** Is that a subject with which you would ordinarily have
25 some facility?

1 **A.** I would expect to, yes, sir.

2 **Q.** This was sent June 2nd, 2020?

3 **A.** That is what it is dated, yes, sir.

4 **Q.** That was a week ahead of the June 9th primary in 2020;
5 right?

6 **A.** I believe so, yes, sir.

7 **Q.** Sure.

8 Now, according to the document, Ms. Johnson was
9 communicating with a Dominion rep; is that right?

10 Excuse me, a Dominion tech.

11 **A.** According to the email that she had sent to what was her
12 Secretary of State county liaison, Dennis Corbone, and to the
13 then election's counsel for the Secretary of State, Kevin
14 Rayburn, and myself, was about a communication that she had
15 with her Dominion tech, yes, sir.

16 MR. SPARKS: Your Honor, with the proviso that I'm
17 interested in Mr. Barnes' response to this email in his
18 experience as CES director, I would like to move Curling
19 Plaintiffs' 34 into evidence.

20 MR. TYSON: No objection.

21 THE COURT: It is admitted.

22 BY MR. SPARKS:

23 **Q.** Now, in this email Ms. Johnson writes that the Dominion
24 tech told her that files with a fix for an ENR, election night
25 reporting, problem needed to be put on a jump drive from his

1 laptop and transferred to the EMS.

2 Do you see that?

3 **A.** I do.

4 **Q.** And you also see where she seeks verification from someone
5 on the State level that this is okay?

6 **A.** Yes.

7 **Q.** Because it contradicts what she's been taught for, quote,
8 18-plus years.

9 Do you see that?

10 **A.** I do.

11 **Q.** So in receiving this email in the ordinary course, did you
12 perceive that Ms. Johnson wanted verification that she should
13 listen to her Dominion tech?

14 **A.** In response to this email, what the -- what the issue
15 underlying, that was going on at the time, was we were in a
16 process of making sure that the RTR application was able to
17 produce a results file in a format that could be successfully
18 uploaded into the State election night reporting system.

19 And that format was developed by Dominion after the
20 election projects had been finalized and sent out to the
21 individual counties.

22 When Dominion had finished finalizing that format, they
23 had to -- they had to transfer that format out to all 159
24 counties. And they did that through their techs that they had
25 positioned in all 159 counties.

1 And then the tech, once they received that update and
2 format, were instructed by Dominion to make sure that that
3 format had been uploaded into the RTR application so that RTR
4 could produce the properly formatted export file for upload
5 into the State election night reporting system.

6 **Q.** Is that common to connect Dominion tech laptops through
7 removal media or otherwise to county EMS servers?

8 **A.** Whenever we were going through a State installation of a
9 new voting system, there are a lot of things that are done to
10 get the voting system to the position that it needs to be to
11 execute the election.

12 **Q.** I understand --

13 **A.** It is not a common act of today. It is not a common act
14 of two years ago. But in the process of rolling the voting
15 system out in 2020 and getting it operational, we did go
16 through instances of making sure that all 159 counties had what
17 they needed to execute the election.

18 **Q.** And that solution proposed by the Dominion tech was
19 ultimately implemented; correct?

20 **A.** Say again.

21 **Q.** The solution proposed by the Dominion tech was
22 implemented?

23 **A.** I don't know if that was directly what was implemented or
24 if Ms. Veronica had him do something else to make sure it was
25 done in a secure fashion.

1 Q. Did you believe it was in February 2022 when testifying in
2 this case?

3 A. I know that it was performed because I know that Lee
4 County was able to upload successfully into ENR.

5 Q. Now, at the time of your deposition, February 2022 again,
6 you were not aware of any forensic examination that had ever
7 been done on any equipment that sits on the Dominion private
8 network; right?

9 A. Are we talking -- what Dominion private network are we
10 talking about?

11 Q. Well, there is a server that sits on the Dominion private
12 network that we discussed earlier to which CES does not have
13 access; correct?

14 A. Again, I'm a little confused of what -- of your question
15 right now.

16 Q. I'll try to ask a better question.

17 You were not aware, as of 2022, whether any sort of
18 forensic examination had ever been done on equipment on the
19 Dominion server to determine if there had been unauthorized
20 access or compromise; is that fair to say?

21 A. If we're referencing the equipment that is housed within
22 the Secretary of State Center for Elections office that is
23 maintained by the SOS IT department, I am not familiar with any
24 actions that SOS IT have taken or not taken in relation to the
25 security of that device.

1 Q. So you weren't aware of that?

2 A. I --

3 Q. Not saying one way or the other, just saying you're not
4 aware?

5 A. Yes, sir. I do not have knowledge.

6 Q. Sure.

7 THE COURT: Do you have knowledge -- you said you had
8 a call with Dominion in nine minutes and we'll get clarity for
9 you about this business of using -- putting county data or
10 elections data on a jump drive of the Dominion tech and then
11 transferring them to the election management system. So sort
12 of going back and forth between the two systems altogether.

13 Do you recall whether you did get clarification as to
14 what was going on or how -- was this the protocol at that time?

15 THE WITNESS: Well, Your Honor, I did not send the
16 response email. That came from the deputy general counsel,
17 Mr. Rayburn.

18 THE COURT: All right. And he didn't advise you what
19 his response was?

20 THE WITNESS: I do not recall.

21 THE COURT: All right. And this was the --
22 Mr. Rayburn, is he still with the Secretary's office?

23 THE WITNESS: No, ma'am, he is not.

24 THE COURT: All right. Thank you.

25 Go ahead.

1 MR. SPARKS: Thank you, Your Honor.

2 BY MR. SPARKS:

3 Q. Mr. Barnes, you have testified in this case to your
4 understanding that all USB ports on printers and BMDs are
5 covered by seals during voting; correct?

6 A. I believe I have testified to that, yes, sir.

7 Q. Okay. And you have also testified that if you have
8 complete unfettered access to the applications of the election
9 system you can make the system do something that it should not;
10 correct?

11 A. State the question again.

12 Q. Sure.

13 If you have complete unfettered access to the applications
14 of the election system, you could make the system do something
15 that it should not; yes?

16 A. If you have unfettered access to an application, can you
17 make a system that is dependent upon information from that
18 application do things that you are not expecting? I would
19 assume so, yes.

20 Q. And if you can manipulate those applications or an
21 application, as you say, at the code level, you could also be
22 able to make the system do something it should not; yes?

23 A. Not being a computer scientist by training, I would assume
24 that if you can alter the code lines within the application,
25 that you can make the application do something other than what

1 it was intended to do.

2 **Q.** And because of that, you work to keep all components of
3 the voting system secure; correct?

4 **A.** All of the -- we work very hard on all components of the
5 voting system, and there are a large number, to try to keep
6 them in as secure an environment as we possibly can, yes.

7 **Q.** And you advise local election officials on these measures?

8 **A.** Yes. We advise, Secretary of State's has advised, the
9 State Election Board has advised counties of the importance of
10 maintaining their election systems to maintain their areas in a
11 secure environment, to control access.

12 **Q.** One of the ways that you control access are seals;
13 correct?

14 **A.** That is one way, yes.

15 **Q.** Sometimes you have to replace equipment for the counties
16 as well; correct?

17 **A.** The act of replacing, if we are talking about a
18 ballot-marking device, if we are talking about an ICP, a
19 tabulating scanner, our office directly does not try to replace
20 a physical device.

21 If a piece of equipment like a BMD or an ICP does not
22 operate, then the local jurisdiction is supposed to return that
23 device to the vendor through an RMA process for repair.

24 And then once repaired, the repaired device then comes
25 through our operation for testing purposes to validate that the

1 repair was done and that the applications residing on the
2 equipment are equal to what is certified within the State and
3 then it is transferred back to the county for operational use.

4 **Q.** I understand CES tries not to replace certain equipment
5 directly, but I asked whether they do.

6 **A.** We have had circumstances where a county will need an ICP
7 on loan and the State does not maintain an inventory of
8 acceptance tested voting equipment equal to what is in the
9 counties, and we will then go through a chain of custody
10 process between the Secretary of State's office and the county
11 for use of that device.

12 **Q.** So there are reasons why you might be asked to replace
13 certain equipment aside from, say, servers and computers used
14 with --

15 **A.** Again, we don't work to replace. We may add on to what
16 they have. But we do not go and collect a BMD from a county
17 and then give them one in return for equal out. That goes
18 through the -- in that process it goes through the vendor
19 through an RMA process back to our office and then back to the
20 county.

21 **Q.** But not in every single instance; is that fair?

22 **A.** I -- knowing our normal course of action, I can't think of
23 an instance where we would not have done that. But it is
24 possible.

25 **Q.** So take Coffee County in June of 2021. The Secretary's

1 office replaced the EMS and the ICC back then, didn't it?

2 **A.** In relation to servers, which is another component of the
3 voting system, servers -- there is only one election management
4 computer in each individual county, the EMS, the election
5 management computer.

6 If the election management computer becomes in a state
7 where it cannot be used, it is inoperable, or a county cannot
8 sign in to it, then a new election management computer has to
9 be distributed to the county so that they can continue their
10 operations and elections.

11 In relation to Coffee County in 2021, a new elections
12 director had been appointed, I believe. And he was attempting
13 to gain access to the election management computer, because I
14 believe they had an upcoming election in March of '21. I
15 think. I may -- my dates may be wrong. Or June of '21. And
16 he was unable to gain access into the election management
17 computer. His password that he had on file was not gaining him
18 access.

19 So as in a normal case, if something like that nature
20 happens, a member of my team will go to that county to see if,
21 in fact, they are unable to access -- gain entry into the
22 computer.

23 We found that we were unable to gain entry into the
24 computer, that the password that the State had on file for
25 being able to sign in to the Coffee County server was not

1 responsive.

2 So at that time, because the county was going to have an
3 election oncoming, the election management computer was
4 collected from Coffee County and brought back to the Center for
5 Election Systems here in the Atlanta area.

6 We also installed a new election management computer in
7 Coffee County so that they could then execute their upcoming
8 election. That was -- that is a normal operation that we
9 undertake in relation to the election management computers.

10 What I was speaking to previously was in relation to the
11 BMDs, the voting equipment. The BMDs and the ICPs.

12 **Q.** That was a very detailed answer to what I thought was a
13 very simple question. Let me try again.

14 **A.** Unfortunately, sir, there are a lot of high-level answers
15 to some of these questions.

16 **Q.** You and I should talk college football sometime. We'll
17 find we have something in common.

18 Let me try again. The Secretary's office replaced the EMS
19 for Coffee County back in June 2021; is that correct?

20 **A.** I believe we replaced the election management computer and
21 the ICC workstation, yes, sir.

22 **Q.** So you did replace the ICC workstation for Coffee County
23 in June of 2021?

24 **A.** Yes.

25 **Q.** And you claimed that the Secretary replaced the ICC

1 because the password did not work; correct?

2 **A.** Correct.

3 **Q.** And you did not replace any other components of Coffee
4 County's election apparatus at that time; correct?

5 **A.** Correct.

6 **Q.** Okay. Going back to seals for a moment, could I ask you
7 to turn to Tab 10 in your binder, please.

8 If you could review the document you find there. This has
9 previously been marked as Curling Plaintiffs' Exhibit 103.

10 **A.** Yes, sir.

11 **Q.** Do you recognize that email?

12 **A.** It looks like one of the many emails I get from counties,
13 yes, sir.

14 **Q.** Sure.

15 The top email is from you to a Samantha Sheldon; yes?

16 **A.** That is correct?

17 **Q.** Who is Ms. Sheldon.

18 **A.** Ms. Sheldon is an employee of mine at Center for Election
19 Systems.

20 **Q.** And the email below is from an election superintendent
21 with Jefferson County; yes?

22 **A.** Yes.

23 **Q.** And the subject line includes, unsurprisingly, Jefferson
24 County Board of Elections?

25 **A.** Uh-huh (affirmative).

1 Q. This was sent February 26, 2020?

2 A. Yes.

3 Q. So this is an email that you would have sent in the
4 ordinary course of business; yes?

5 A. Yes.

6 MR. SPARKS: Plaintiffs move admission of Curling
7 Plaintiffs' 103 into evidence.

8 MR. TYSON: Your Honor, we would object to the
9 portion of the message from Ms. Gray regarding Jefferson
10 County. The -- that is hearsay. It is being offered, I'm
11 assuming, for the truth just because the rest of the document
12 wouldn't make a lot of sense otherwise.

13 Also we just note on a relevance basis that there is
14 two indications on this that this was a mistake by the county
15 officials and there is nothing related to a burden on the right
16 to vote from the State shown in this message.

17 MR. SPARKS: That fact that it's an apparent mistake
18 by the county officials is actually part of my point, Your
19 Honor.

20 And I might add by this point we now have a pattern
21 of Mr. Barnes receiving emails like this, particularly from
22 county election officials, in the ordinary course of his
23 business. This is quite apparently a business record. It is a
24 public record as well, but it is a business record received by
25 CES. I would actually contend that it is admissible in full.

1 THE COURT: All right. Well, I don't know anything
2 about it, frankly, at the moment, so I guess I'm going to allow
3 you to go forward. And if I want, I'll rule on the evidentiary
4 issue later.

5 MR. SPARKS: Thank you, Your Honor.

6 BY MR. SPARKS:

7 Q. So this election superintendent wrote you with BMD serial
8 numbers from which she took a State seal off by mistake; yes?

9 A. Yes.

10 Q. And she replaced them with her own seals; right?

11 A. It appears so, yes, sir.

12 Q. And what you have responded to an employee at CES,
13 Ms. Sheldon, is to update the numbers in EasyVote to document
14 the new numbers of the seals; yes?

15 A. What -- excuse me. The BMDs, when they were delivered to
16 a county, had a number of seals and State monikers that were
17 placed on the device.

18 What I believe Ms. Gray was referencing was a seal, a wire
19 seal that had been placed in the top left corner of the BMD
20 that we referenced as the State seal. There is also a second
21 sticker that is in that same place -- it is called the
22 State's acceptance test sticker -- that creates an indelible
23 mark if you remove it.

24 The seal could be broken by mistake. If the sticker is
25 not removed, then that gives evidence that that particular

1 panel has not been interfered with.

2 I believe I had a phone call with Ms. Gray once I received
3 this and asked the question if the sticker had been removed.
4 And I believe in that discussion she told me it had not been.

5 And based upon that other additional information, she
6 provided me with this listing of the seals that she had put in
7 place of the seals that they had mistakenly removed. So then I
8 instructed Ms. Sheldon to make sure that we had updated the
9 record that we have for what would be designated as the State
10 seal on these devices.

11 **Q.** So what was important was making sure you had the correct
12 paperwork; is that right?

13 **A.** No, sir. Because I followed up -- again, my recollection
14 is that I followed up with Ms. Gray to make sure that that
15 particular compartment had not been opened. And if it had been
16 opened, then we would have taken some additional action. We
17 would have probably gone to the county and performed what we
18 call an acceptance test just to validate to make sure that
19 nothing had been added into the devices.

20 But because the sticker, to my recollection, had not
21 been -- it had not been removed, it had not been cut, it had
22 not been acted upon, that I felt the appropriate thing was to
23 accept her mistake and allow her to put new seals on the
24 devices and make document of what those seal numbers were.

25 **Q.** But you didn't personally review that the doors were not,

1 in fact, opened; right?

2 **A.** I did not travel to Jefferson County and look with my
3 myself, correct.

4 **Q.** You took -- sorry, I thought I heard something.

5 You took Ms. Gray's email at face value; yes?

6 **A.** I took Ms. Gray's email and my conversation with Ms. Gray,
7 yes.

8 **Q.** What the election superintendent told you in full?

9 **A.** Yes.

10 THE COURT: All right. I'm just a little bit
11 confused. I do understand what the conversation is. I'm not
12 sure how -- that this has any particular significance as a
13 whole.

14 But there are two types of seals? There was a -- you
15 indicated that Ms. Gray -- you thought that Ms. Gray was
16 referencing a seal, a wire seal, that had been placed in the
17 top left corner of the BMD that you referenced as the State
18 seal.

19 Is that certifying that it's their property, or is it
20 certifying the -- that it has been examined?

21 THE WITNESS: The BMD has a number of seals that are
22 placed on it. At the time that the equipment was originally
23 procured by the State and tested by the State before
24 distribution to the county, as part of that process, the State
25 attached two independent seals on the top left side of the BMD.

1 One is a tamper evident sticker. The second is a
2 wire seal. The sticker is only maintained by the Secretary of
3 State's office. We have that sticker in our supply. Counties
4 cannot obtain that sticker.

5 THE COURT: And that's the sticker that says that the
6 State has done acceptance testing on it?

7 THE WITNESS: That is correct. Yes.

8 THE COURT: That's not -- that's not the sticker she
9 had removed or it is?

10 THE WITNESS: She -- what -- to my recollection, what
11 she removed was the wire seal that is right above where that
12 sticker resides, that she had mistakenly removed that wire
13 seal. Counties do have additional wire seals in their -- in
14 their ownership. Because they have to put seals onto equipment
15 from election to election. So at that point, through
16 conversation with her, I concluded that the sticker itself had
17 not been tampered with, meaning that the door had not been
18 opened.

19 And because of that I instructed her to go ahead and
20 put a new set of seals on there, wire seals, give us the serial
21 number and the seal attached, and then we would update our
22 records to indicate that.

23 THE COURT: All right. I'm not sure that this makes
24 a difference, but maybe you'll hook it up with something else.
25 I don't know.

1 MR. SPARKS: My next question was actually whether
2 Mr. Barnes -- let me ask this slightly differently.

3 BY MR. SPARKS:

4 Q. You've instructed a county election superintendent to
5 actually accept machines with missing seals before; correct?

6 A. Which seals?

7 Q. Election data seals are what I'm curious about at the
8 moment.

9 A. Okay. The election data seal is on the right-hand side of
10 the system. It is on the top right. The election data seal is
11 a seal that is placed by a county on a device from election to
12 election. The election data box is where election data is
13 actually loaded on to the BMD. And you have to load a BMD with
14 the right ballot styles for a given election. So counties are
15 commonly removing that seal, adding a new seal in its place.

16 Q. So if a county forgot to reseal the election data port,
17 we're talking about in between elections, you would just simply
18 instruct them to pop a new seal on there and move on?

19 A. Well, I would have always instructed -- I would try to
20 instruct them to make sure that -- you know, know the serial
21 number. Know what the condition the device was in.

22 Was this a device that was leading up to L&A testing? Was
23 this a device that had been L&A testing where there would be
24 paperwork outlining what state it was in? Be aware of what it
25 was before you just put a new seal on something. First

1 investigate why the seal may or may not be there.

2 **Q.** Let's go ahead. Could you turn to Tab 11 in your binder,
3 please.

4 If you would review that document, I would appreciate it.

5 **A.** (The witness complies.)

6 Okay.

7 **Q.** Do you recognize this email?

8 **A.** I remember it. Not verbatim. But I do recognize it as an
9 email I have received, yes.

10 **Q.** And you see the top email is from you to Clinch elections?

11 **A.** Yes.

12 **Q.** And from the second email that appears to refer to the
13 Clinch County election supervisor; yes?

14 **A.** Yes.

15 **Q.** And you see the subject includes data seals?

16 **A.** Uh-huh (affirmative).

17 **Q.** July 9, 2020?

18 **A.** Uh-huh (affirmative).

19 **Q.** So this would have been another email that you would have
20 received and sent in the ordinary course of your work; yes?

21 **A.** Yes.

22 MR. SPARKS: We move Curlings Plaintiffs' 104 into
23 evidence.

24 MR. TYSON: Your Honor, we'll just make the same
25 relevance and hearsay objections in terms of what the county

1 did and said and relevance to the claims in the case.

2 MR. SPARKS: In this case I'm interested in
3 Mr. Barnes' response and reasoning for that response and
4 direction the county election official to do something, not the
5 truth of what the county election official said.

6 THE COURT: All right. I'll let it in for that
7 purpose, but you're going to have to hook up -- connect all of
8 this. I'm not sure ultimately that I understand. I understand
9 the point about the security of the machines.

10 MR. SPARKS: I'll be brief, Your Honor.

11 THE COURT: All right.

12 BY MR. SPARKS:

13 Q. In this email in response to the Clinch County election
14 supervisor, you instructed them to accept machines with missing
15 data seals to apply their own seal and then to document the
16 number; yes?

17 A. What they outlined is that the tech was doing L&A testing.

18 Q. I'm just asking what you said to her.

19 A. Right. But my response was based upon the fact that the
20 seal was missing at the election data compartment, which is the
21 compartment that would be open and used to set and program a
22 device during L&A testing.

23 So it would not be uncommon for -- at the end of L&A
24 testing for a county to have forgotten to put that seal on like
25 they should. Their paperwork outlines that they should be

1 putting that seal in place at the conclusion of L&A, but it is
2 not uncommon sometimes for a county to forget something.

3 **Q.** So at that point the county would be wholly dependent on
4 physical security measures around the seals to keep that port
5 secure; isn't that right?

6 **A.** There is nothing behind the door, except the two ports.
7 But that is correct. Yes. It is important that that seal be
8 in place. But what the county was relaying to me is that at
9 the end of L&A testing they then noticed that the seal wasn't
10 there. And the seal should be there. So that is why I
11 instructed them that they didn't have to do another additional
12 environment, they needed to make sure the seal was placed.

13 **Q.** Well, you mentioned acceptance testing on machines; yes?

14 **A.** Yes.

15 **Q.** So sometimes a seal is broken or missing. I'm wondering
16 why counties do that testing and why you think it matters for
17 assessing the security of the equipment.

18 **A.** Counties do not do acceptance testing.

19 **Q.** Okay. So the State does the acceptance testing?

20 **A.** The State does acceptance test.

21 **Q.** Thank you for correcting me.

22 So same question. Why do you do that testing and why does
23 it matter for assessing security of the equipment?

24 **A.** The acceptance testing is done to assess that what has
25 been placed on the device is equal to what has been certified

1 for use at the State. Is that we have a specific application
2 set that is used to execute elections. It has been put through
3 federal testing in compliance with the voting system
4 guidelines.

5 It is then -- the vendor then says, this is what we intend
6 to sell and distribute to the State. The State then agrees to
7 that. And then that equipment becomes certified for use within
8 the State.

9 And then when the equipment is brought into the State, the
10 State does acceptance testing on the components, the BMD, the
11 ICP, the election management computer, the workstations to
12 validate that the applications installed are equal to what has
13 been agreed upon and that they are equal to what has been
14 certified at the federal and state level.

15 **Q.** So you are saying acceptance testing is a way to test the
16 certification of the equipment?

17 **A.** Acceptance testing is a -- is two-fold. It is validating
18 that the applications that are on the devices are what have
19 been certified federally and by the state, and also an
20 operation to do a functionality test on the equipment to
21 validate that it is functioning properly as well.

22 **Q.** This is all in a testing environment; correct?

23 **A.** Well, there is no testing environment with the BMD. Is
24 that you are either using it or you are not using it. It is
25 either executing an election or it is not executing an

1 election. There is no pre-election mode, election mode, or
2 post election mode like existed with the previous system, the
3 DRE system.

4 **Q.** Let me move to a minute -- let me move to a minute. Let
5 me move for one moment to the document behind Tab 13 in your
6 binder, please.

7 THE COURT: I'm sorry.

8 MR. SPARKS: Oh. I'm sorry, Your Honor.

9 THE COURT: Let me just -- when you do logic and
10 accuracy testing, for instance, you are using it on -- you are
11 still doing a mock election. So you are saying there is no way
12 of testing these computers that you've accepted, except in an
13 election context where you are actually operating the election?

14 THE WITNESS: The logic and accuracy test that is
15 done preceding an election is using the actual election data
16 sets that will be used on election day.

17 THE COURT: I understand that.

18 THE WITNESS: And -- but the answer to your question
19 is, there is no testing mode. It is you either are using it in
20 the exact same way that you will be using it on election day,
21 it is just a matter of what date on the calendar. That is the
22 only difference. Is you turn the machine on. It processes a
23 ballot. It is not processing it in test mode. It is
24 processing it in actual election mode.

25 THE COURT: All right.

1 And that is the testing that you-all do, or not?

2 THE WITNESS: We do -- for what we do, we do -- in
3 our acceptance testing we are validating what has been
4 installed. We're checking the signature of the applications to
5 make sure that it is what should be there. And then we are --
6 we are loading an election data set to the device and executing
7 an election action where we're casting ballots, tabulating
8 results.

9 THE COURT: All right. If I understand what you are
10 saying -- and maybe I'm not. That's why I'm asking it again.

11 You're saying that when -- the type of testing that
12 you are doing when you have a new computer that has been
13 delivered and with software is that you are testing that you
14 actually received the bundle of programs and software that you
15 were supposed to receive and that you contracted for?

16 THE WITNESS: Uh-huh (affirmative).

17 THE COURT: But you're not testing its functionality?

18 THE WITNESS: Two-fold. We check to make sure that
19 what we received has been certified by the federal testing
20 authority. And we get validation -- we actually get the
21 applications directly from that federal testing authority.
22 They are hand delivered or delivered from the testing lab in
23 Huntsville, Alabama.

24 THE COURT: The one the State contracts with?

25 THE WITNESS: That the State contracts with to get

1 the applications.

2 THE COURT: And that is a private contractor though;
3 right?

4 THE WITNESS: Yes. Yes, Your Honor.

5 THE COURT: All right.

6 THE WITNESS: The installation is done onto the
7 voting equipment, to the BMDs, to the ICPs.

8 Once we have the proper installation on the machines,
9 then we will build an elections project. We will go through
10 the process of building a -- we call it a test file. But we
11 create -- in essence, we create -- we call it like anywhere
12 county. And we'll create a set of precincts. And then we will
13 build ballot combinations within those precincts. And it will
14 generate ballots that can then be placed on to the BMD. And
15 then ballots generated from the BMD and then tabulated by the
16 ICP.

17 So we basically run an entire election. It is not in
18 test mode. It is just building a test election, putting it on
19 to the system and making sure that if we set -- if we build a
20 ballot that has candidate one, two, and three on it, and then
21 we vote a particular pattern for candidate one, for candidate
22 two, for candidate three, when we send that through the
23 tabulator, does the tabulator calculate the expected result.

24 If it does, then we feel confident that the voting
25 system is functioning properly.

1 THE COURT: All right. But let me just ask: You're
2 doing that at the central office or are you asking the
3 people -- the folks who are in all of the precincts to be doing
4 this or in the county election offices as well to do a whole
5 new run? That is what I'm not clear about.

6 THE WITNESS: Right. What we do at the State is
7 testing the equipment, in essence, before it gets to the
8 counties.

9 THE COURT: Each machine you are saying?

10 THE WITNESS: Each machine we see it before it gets
11 distributed to the county.

12 Once the county has it in their possession, prior to
13 each individual election, once they get the election project
14 delivered from us to them, the county will then load that
15 election project on to their election management computer.

16 And then they will begin the process of creating the
17 data that is then loaded to the BMDs and to the scanners. And
18 then the county will go through a testing operation, but that
19 testing operation is creating ballots from that election,
20 putting -- with a known result, putting them through the
21 scanners for the scanners to then tabulate.

22 And then the tabulation from the scanner is matched
23 against the known result that was known before the test began
24 to validate that the tab -- that the scanners are tabulating
25 properly. And that is done prior to every election and that is

1 done in every jurisdiction.

2 THE COURT: All right. Do you have any follow-up?
3 I'm not sure where we are at this point. So I'm sorry if I
4 caused a detour.

5 MR. SPARKS: As my colleague reminded us all, it is
6 your courtroom, Your Honor.

7 THE COURT: Well, not necessarily to cause detours
8 in.

9 BY MR. SPARKS:

10 Q. Well, to take another turn to come back to 104 for a
11 moment, I, on reflection, realize there was a step missing in
12 your answer I'm curious about, Mr. Barnes.

13 You gave the example, if I heard you correctly, that
14 counties sometimes forget to put the seals back on in L&A
15 testing. You directed them to put their own seal on the
16 equipment, document the seal number attached thereafter to use
17 the BMD.

18 Am I correct so far?

19 A. Yes.

20 Q. Okay. Did you -- did you assume that the county forgot to
21 apply the required seals in the midst of L&A testing?

22 A. That is my assumption, yes.

23 Q. Okay. But you didn't confirm it another way?

24 A. Not to my recollection, no, sir.

25 Q. Did it occur to you that -- did you consider whether the

1 missing seals were the result of unauthorized access to the BMD
2 and that is why the seals were missing?

3 **A.** My recollection of the event is, no, I felt like this was
4 a -- this was an honest mistake made in the process of getting
5 the equipment ready.

6 **Q.** So you didn't request an investigation or for the factual
7 development of any kind?

8 **A.** I do not recall doing so.

9 **Q.** If you had considered doing so, presumably you would not
10 have sent this email directing her to put the seals back on the
11 BMD; correct?

12 **A.** That is correct.

13 **Q.** Now let's turn to Tab 13 for just a moment, please. This
14 is a document marked as Curling Plaintiffs' Exhibit Number 256.
15 I would like you to review it, please.

16 **A.** Okay.

17 **Q.** Do you recognize this?

18 **A.** Honestly, no, I don't recognize it or remember it. It
19 looks like it was an email that was sent from Scott Tucker and
20 just updating the Secretary of State's office of things that
21 were transpiring I believe on the first day of advanced voting
22 in October of 2020.

23 **Q.** That is why we have an email account to keep all these
24 emails, isn't it?

25 **A.** Yes.

1 Q. So we talked a little about Scott Tucker earlier.

2 Who is Tom Feehan?

3 A. Tom was the project manager for the rollout of the voting
4 system in 2020 for Dominion.

5 Q. And this is something you would have received in the
6 ordinary course of your work; yes?

7 A. I believe I was on a distribution list of these things,
8 yes.

9 MR. SPARKS: Your Honor, I forget whether this is
10 already in evidence. To the extent it is not, I would move for
11 admission of Curling Plaintiffs' 256 at this time.

12 MR. TYSON: Your Honor, we would interpose the same
13 objections in terms of hearsay of the statement from Dominion.
14 Mr. Barnes has testified he doesn't recognize this email
15 particularly. And also relevance in terms of the claims in the
16 system with the actions of the State.

17 MR. SPARKS: Same objection responses as I have had.
18 Your Honor, the email is clearly relevant and that it makes
19 facts of consequences more or less likely to be true.

20 THE COURT: Well, clearly it is a regular business
21 record, but I don't know if he doesn't remember anything about
22 it, it is hard to completely use on the other hand. But maybe
23 somebody else has some knowledge about it.

24 MR. SPARKS: Well, I have a few questions. If you
25 don't mind, I'll explore it with him to see what he remembers.

1 THE COURT: Go ahead.

2 BY MR. SPARKS:

3 Q. Mr. Barnes, there are a couple of words in here I want to
4 make sure I understand correctly. Turning to the third and
5 last bullet point in the email, it begins, quote, Cherokee had
6 a PW use a tech card.

7 Did I read that correctly?

8 A. Yes.

9 Q. Is your perception that Cherokee refers to Cherokee
10 County, Georgia?

11 A. That would be my assumption, yes.

12 Q. And how about PW? Would that mean poll worker?

13 A. I would assume that would be what that means.

14 Q. And what would you presume or know that tech card means?

15 A. A tech card is a particular type of smart card that is
16 used in association with the ballot-marking device, the BMD.

17 Q. Is it the same thing as a super card?

18 A. I don't know if I can classify it as that. I only know it
19 as a technician card. I do not know if there is a super card
20 that Dominion may have that I'm unaware of. There are only
21 three types of cards that I have experience working with. And
22 that is the technician card, the poll worker card, and the
23 voter card. Those are the only three that I'm aware of.

24 Q. But a technician card and a poll worker card are
25 different; yes?

1 **A.** Yes.

2 **Q.** Okay. So would it be within the ordinary duties of a 2020
3 poll worker, in your experience, to be using a tech card?

4 **A.** No.

5 **Q.** No?

6 **A.** No.

7 Let me restate that. In 2020, again rolling out new
8 things, I would have been hopeful that poll workers were not
9 having access to tech cards.

10 In today's environment I know that poll workers are not
11 using tech cards. But in 2020, in this first rollout, I don't
12 know if counties were sending tech cards out to the polling
13 places or not. I do not believe that is common practice today.
14 But when they were first getting used to using the system in
15 2020, they may have been using a -- sending tech cards out at
16 that point in time.

17 **Q.** Well, this is -- email is from October of 2020; isn't that
18 right?

19 **A.** It is.

20 **Q.** This certainly would not have been the first election
21 where Cherokee County was using this new equipment; correct?

22 **A.** It would not have been the first, but it would still have
23 been very early on in their use of the equipment.

24 **Q.** Sure. All right.

25 THE COURT: Well, I'm going to allow it in as a

1 business record. It is obviously sent to all of the
2 individuals involved in administration of the new system from
3 the central office of the Secretary of State's office.

4 I don't know whether you're going to be able to -- I
5 can't completely say that it is -- verify the truth of it
6 because I don't even have any -- the information from -- from
7 the witness. But it is an ordinary record kept obviously
8 for -- and provided to everyone so that they would know this --
9 this -- I would consider important fact because of the fact
10 that it was sent to critical people who were involved in the
11 original administration of this system. That they would know.
12 So, you know, without knowing all the details but obviously
13 that seems to be the purpose of it.

14 MR. SPARKS: Thank you, Your Honor.

15 Just one additional question.

16 MR. CROSS: Your Honor, could I just add one thing?
17 There was an objection that came up on this document yesterday
18 and I just wanted to flag for the Court. We did go back and
19 take a look. The State represented to the Court on July 26 of
20 2021 in Docket 1143, Page 36, Lines 19 to 25, twice I think, in
21 fact, that Dominion is the State's agent.

22 So I just wanted -- since we said we would follow up
23 on that, I wanted to give that to Your Honor. Because that is
24 our position that statements by Dominion in this case,
25 particularly in their official capacity, would come in as

1 admissions by a party opponent because they are, in fact, the
2 State's agent according to the State.

3 MR. TYSON: I'm sorry. David, can you give us that
4 one more time? Let us check.

5 If you don't mind, Your Honor. I would like to look
6 at that.

7 MR. CROSS: It is 1143.

8 THE COURT: At lunchtime you can look at it and I'll
9 just be conditional in my ruling and you can look at it.

10 It doesn't look like you have any more documents; is
11 that right? You have more testimony to elicit?

12 MR. SPARKS: Your Honor, I have three more volumes
13 right over here.

14 THE COURT: That's wonderful.

15 MR. SPARKS: I kid. I kid.

16 No, Your Honor. I have just a few more questions
17 left.

18 THE COURT: All right. Go ahead.

19 MR. SPARKS: And thank you, Counsel, for the
20 reminder.

21 BY MR. SPARKS:

22 **Q.** Mr. Barnes, as late as February 2022, you were not aware
23 whether Georgia's election system could be compromised in a way
24 that would change selections encoded on a QR code of a ballot
25 from what is reflected on the human readable portion of that

1 same ballot; isn't that right?

2 **A.** Can you state the question again?

3 **Q.** Yes. Travel back with me in time to February 2022.

4 Are you there?

5 **A.** I'm trying.

6 **Q.** At that time you were unaware whether Georgia's election
7 system could be compromised in a particular way, that way being
8 the selections encoded in the QR code of a ballot would not
9 reflect the human readable portion of that same ballot? You
10 were unaware of that possibility; isn't that right?

11 **A.** I would say in February of '22 I was not aware of how or
12 if the QR code could be manipulated in a way that it would not
13 be equal to what was on the human readable form of the ballot.

14 **Q.** In fact, no one told you about a demonstration for this
15 very Court in September 2020 by Dr. Alex Halderman; right?

16 **A.** Correct.

17 **Q.** You didn't know that demonstration happened in a hearing
18 much like the ones you testified in earlier in this case in
19 2018 and 2019; right?

20 **A.** Correct.

21 **Q.** And no one from or representing the Secretary's office
22 told you that Dr. Halderman prepared a report given to the
23 Secretary of State's counsel in this case?

24 **A.** Correct.

25 **Q.** Or that Dr. Halderman's report in this case described

1 further investigation of election equipment he conducted on
2 equipment securely provided by Fulton County?

3 **A.** Correct.

4 **Q.** In fact, you weren't aware of the numerous security
5 vulnerabilities in the voting equipment, that you as director
6 of CES were responsible for, that Dr. Halderman described;
7 right?

8 MR. TYSON: Your Honor, I'll object in terms of the
9 characterization of the scope of Mr. Barnes' responsibilities
10 at CES. I think that calls for a legal conclusion about what
11 his duties were.

12 MR. SPARKS: I'll rephrase the question.

13 BY MR. SPARKS:

14 **Q.** Mr. Barnes, you were not aware of the numerous security
15 vulnerabilities in the voting equipment in which CES has some
16 role that Dr. Halderman described in his report; isn't that
17 right?

18 **A.** Correct.

19 **Q.** And no one from the Secretary's office told you about
20 this, not by September 2020, not by July 2021, and indeed not
21 by February 2022; isn't that right?

22 **A.** That's correct.

23 **Q.** In fact, at that time all the knowledge you had about
24 Dr. Halderman came from a news article you saw or heard about
25 in the couple of weeks before you testified; isn't that true?

1 **A.** Correct.

2 **Q.** And you were not aware as of that same moment,
3 February 2022, that the State's own expert retained for this
4 case, Dr. Michael Shamos, advised that the State should not use
5 QR codes in election systems; correct?

6 **A.** Correct.

7 **Q.** But you did know at that time that the only cybersecurity
8 expert on the SAFE Commission was Dr. Wenke Lee; yes?

9 **A.** I believe, yes, he was on the commission, yes.

10 **Q.** And you did know that Dr. Lee objected to the use of BMDs
11 in the state of Georgia and specifically urged the adoption of
12 hand-marked paper ballots; right?

13 **A.** I can't remember specifically what he recommended. But I
14 know that he objected, yes.

15 **Q.** In fact, you knew that Dr. Lee's opinion was that
16 electronic ballot-marking devices, like the BMDs we have
17 discussed today, were not sufficiently secure in the current
18 environment, in the then current environment of threats to U.S.
19 elections?

20 MR. TYSON: And, Your Honor, I'll object. There is
21 no foundation for Dr. Lee's opinions related to ballot-marking
22 devices. It is in the record.

23 BY MR. SPARKS:

24 **Q.** Okay. Can we look at your deposition testimony for a
25 moment, sir?

1 **A.** Sure.

2 **Q.** And just to be clear, your testimony is that you don't --
3 actually, I don't think I got an answer to the question, so --

4 MR. TYSON: I objected to it.

5 THE COURT: Because he objected to it.

6 MR. TYSON: I objected to it.

7 MR. SPARKS: Right.

8 BY MR. SPARKS:

9 **Q.** So I'm asking, Mr. Barnes, I'm trying to confirm that you
10 were aware in February of 2022 of Dr. Lee's opinion that BMDs
11 were not sufficiently secure in the environment of threats to
12 U.S. elections.

13 MR. TYSON: And same objection, Your Honor, in terms
14 of lack of foundation for Dr. Lee's opinions. I think he can
15 ask him if he knew -- if he knew if Dr. Lee had opinions or if
16 he knew what Dr. Lee's opinions were, but he's characterizing
17 those opinions in the question.

18 MR. SPARKS: Well, the witness just testified that he
19 understood that he objected to the use of BMDs in Georgia
20 elections, so he certainly has some foundation for what his
21 opinion may have been.

22 THE COURT: Well --

23 MR. SPARKS: If you don't remember -- he doesn't
24 remember, we can move on.

25 THE COURT: Tell us what your recollection is.

1 THE WITNESS: I'll be honest. I know that there was
2 the SAFE Commission. I do not remember a lot of information
3 that came out from the SAFE Commission in that statement. I
4 just don't remember today.

5 BY MR. SPARKS:

6 **Q.** Sure. Understood.

7 You also weren't aware that the head of Fortalice
8 testified in this case back in 2019 that it is not a question
9 of when a U.S. election will be hacked but if?

10 **A.** I'm not aware.

11 **Q.** Just a couple more questions, Mr. Barnes, if I may.

12 Concerning audits, you're not aware of any audit Georgia
13 required through the 2022 election cycle that tests whether the
14 human readable portion of a ballot and the QR ballot capture
15 the same selections; right?

16 **A.** In 2022, we had a statewide election which I believe there
17 was an RLA done in relation to the November election. The
18 framework of the RLA in relation to what the counties are
19 checking during the RLA, I cannot speak to.

20 **Q.** And you can't identify a single expert retained by the
21 State in this case that has endorsed the current Georgia system
22 as reliable, can you?

23 **A.** I cannot.

24 **Q.** But you're certain that if the Secretary decided to have a
25 or decided to -- actually, you know what, strike that. That is

1 not quite what I want to ask. Excuse me.

2 Here we go. Here is what I wanted. Forgive me.

3 So the Secretary's office instructs counties to have
4 preprinted copies of hand-marked paper ballots available in
5 event of an emergency. You're aware of this; yes?

6 **A.** Yes.

7 **Q.** Sure.

8 And those can be scanned by the ICPs in polling locations
9 on election day; right?

10 **A.** When we build an election project file, we do configure
11 the ICP to be able to process a BMD ballot or an optical scan
12 ballot, yes.

13 **Q.** Because at minimum you could have provisional ballots that
14 need to --

15 THE COURT REPORTER: I lost your whole question.

16 MR. SPARKS: And I'll ask a slightly better one as
17 well, because Mr. Barnes pointed out an important detail.

18 MR. KNAPP: Slow down.

19 MR. SPARKS: I'm trying. I promise. I'm sensitive
20 to the Court's time. And my enthusiasm gets the best of me.

21 BY MR. SPARKS:

22 **Q.** Yes. Those can be scanned by ICPs in polling places on
23 election day in part because you could have emergency ballots
24 that need to be cast; correct?

25 **A.** We make sure that the ICP is able to process a BMD or an

1 optical scan ballot just in case it needs to.

2 **Q.** And poll workers are trained on those measures; yes?

3 **A.** Poll workers are trained --

4 MR. TYSON: Objection, Your Honor. I don't -- we
5 don't have a foundation again. The State trains county
6 officials. County officials train poll workers. We don't have
7 a foundation of knowledge for the training of poll workers.

8 MR. SPARKS: Mr. Barnes has -- excuse me, Bryan. I'm
9 sorry.

10 MR. TYSON: Go ahead.

11 MR. SPARKS: Mr. Barnes has testified on multiple
12 occasions today that he would expect poll workers and election
13 officials to take certain actions. I don't believe those are
14 restricted to election superintendents.

15 I think I am allowed to ask him whether he would
16 expect and certainly has experience knowing that poll workers
17 are, in fact, trained on these measures. I didn't ask if CES
18 trains them directly.

19 MR. TYSON: And, Your Honor, I'm fine with the
20 question of whether he expects that. The question was are they
21 trained on that, which was the reason for my objection.

22 THE COURT: Okay. We'll go with the second question,
23 the expects.

24 BY MR. SPARKS:

25 **Q.** Mr. Barnes, in your experience as director of CES at the

1 Secretary of State's office, you would expect poll workers to
2 be trained on these measures; correct?

3 **A.** I would expect poll workers to be trained on a litany of
4 measures to execute on election day. One of them being that if
5 their BMD became -- if all of their BMDs became inoperable that
6 they would transition to the use of optical scan ballots.

7 To what extent are they trained, I can't speak to. But I
8 do have an expectation that they would know what to do.

9 **Q.** And that litany of measures would include security of the
10 equipment; correct?

11 **A.** Correct.

12 **Q.** It would include chain of custody measures of hand-marked
13 paper ballots that had to be used; right?

14 **A.** It would be my assumption that poll workers have, again, a
15 litany of things in relation they have to maintain a chain of
16 custody on. Be it supplies, be it paper ballots that the
17 county has provided them in case for -- to have available in
18 case of emergency. I suspect that there are a lot of things
19 that poll workers are keeping record of and maintaining, yes.

20 **Q.** You suspect or you expect?

21 **A.** I expect.

22 **Q.** And to be clear, CES and your team does, in fact, train
23 the trainers of these poll workers; right?

24 **A.** We train the election supervisors on the use of the voting
25 equipment. The procedures that a poll worker uses in relation

1 to maintaining their supplies and so forth and so on, those are
2 not things that we train the election supervisor on. We train
3 the election supervisor on how to interact with their election
4 management computer. How to load information to their BMD.
5 How to prepare the BMD. How to prepare the ICP for use in an
6 election.

7 **Q.** And how, in part, to ensure that hand-marked paper ballots
8 when placed in an ICP properly scan; correct?

9 **A.** We show them how that an ICP can accept both a
10 BMD-generated ballot and an optical scan ballot, yes.

11 **Q.** And these expectations are not new; right?

12 **A.** Correct.

13 **Q.** Okay. And Georgia actually processes millions, millions
14 of hand-marked paper ballots some years; right?

15 **A.** That is correct.

16 **Q.** Because they are used in absentee by mail voting; right?

17 **A.** That is correct.

18 **Q.** And you wouldn't suggest there is anything unreliable
19 about that processing, sitting here today?

20 **A.** The state of Georgia has been using optical scan ballots
21 for its absentee ballot environment uniformly since 2002. So I
22 believe that those ballots, the optical scan ballots, the way
23 they are used, the previous system and the current system, are
24 reliable ballots. Yes.

25 **Q.** And you have confidence that Georgia's system scans

1 hand-marked paper ballots received properly to reflect the
2 intent of each ballot's voter; yes?

3 **A.** It is my belief that the voting system scans all ballots,
4 whether it is a BMD-generated ballot, whether it is an optical
5 filled-out ballot, accurately and reflects the intent of the
6 voter that voted it.

7 **Q.** So fair to say you do have confidence in the hand-marked
8 paper ballot option?

9 **A.** I have confidence in the voting system that we have in the
10 state, yes.

11 **Q.** Including the hand-marked paper ballot option?

12 **A.** I have confidence in all the components, yes, sir.

13 MR. SPARKS: Okay. If you would give me one moment
14 to confer with counsel, please.

15 **(There was a brief pause in the proceedings.)**

16 MR. SPARKS: Your Honor, no further questions at this
17 time.

18 THE COURT: Okay. Let's take a lunch recess.

19 MR. TYSON: Your Honor, if I could, we don't have any
20 questions for Mr. Barnes. So if he could be released to get
21 back to his job. He's obviously subject --

22 THE COURT: I have some questions myself.

23 MR. TYSON: I apologize.

24 THE COURT: Not many. But I'm so sorry.

25 MR. TYSON: That's fine. I'm sorry, Your Honor. I

1 didn't realize that.

2 THE COURT: That's all right. But then he can be
3 released. So I guess he gets the opportunity to have lunch in
4 our wonderful cafeteria. But it is quite improved.

5 Yes?

6 MR. OLES: If it is appropriate, I do have a few
7 questions on behalf of my client.

8 THE COURT: All right. Well, then we'll -- and do
9 you have some questions too?

10 MR. BROWN: Yes. About ten minutes.

11 THE COURT: All right. Well, so he's not free.

12 MR. CROSS: That's right. We tried.

13 THE COURT: All right. But, remember, not too long,
14 as I discussed with you-all.

15 MR. SPARKS: Yes, Your Honor.

16 THE COURT: All right. It is -- it is 12:45 roughly.
17 So we'll see you at 1:30 I guess. We'll see you at 1:30.

18 **(A lunch break was taken.)**

19 THE COURT: Have a seat.

20 MR. TYSON: And, Your Honor, if I could just before
21 Mr. Brown's examination, I want to object under local Rule
22 39.3(b)(1), the one attorney per side if there's truly --

23 THE COURT: I think I have already ruled on this and
24 reminded everyone that it applies, and given a ruling that, you
25 know, I would allow a small amount of additional questioning,

1 but it had to be small.

2 MR. TYSON: Understood, Your Honor. Thank you.

3 MR. BROWN: Thank you, Your Honor. This will be very
4 short.

5 CROSS-EXAMINATION

6 BY MR. BROWN:

7 Q. First --

8 THE COURT: I think the local rule authorizes me to
9 do that as well. All right?

10 MR. BROWN: Thank you, Your Honor.

11 BY MR. BROWN:

12 Q. Good afternoon, Mr. Barnes.

13 A. Good afternoon.

14 Q. I'm Bruce Brown. We've met. Let me follow up about the
15 different cards that are inserted into a BMD at the county
16 level.

17 There is a card that the voter puts into the machine to
18 activate the screen; correct?

19 A. Correct.

20 Q. But then there are technician cards that go into the same
21 slot that would allow a technician much greater access to the
22 application; is that right?

23 A. There is a technician card that is used in the loading of
24 election information to the device, yes.

25 Q. And would poll workers be expected to have a technician

1 card?

2 **A.** It would be my expectation that poll workers would not
3 need a technician card or would not have access to a technician
4 card in the polling place on election day or during advanced
5 voting.

6 **Q.** And they probably should not have one; fair to say?

7 **A.** I cannot think of a need of why they would have one.

8 **Q.** Okay. Mr. Barnes, what is your office's rule in logic and
9 accuracy testing?

10 **A.** What -- my office prepares the election project file that
11 contains the ballot styles, the precincts, the polling
12 locations that is distributed to the individual counties, and
13 that is it. The counties are responsible for performing the
14 local -- the logic and accuracy testing on the voting equipment
15 that is to be used in their jurisdiction.

16 MR. BROWN: May I approach the witness, Your Honor?

17 THE COURT: Uh-huh (affirmative). Yes.

18 BY MR. BROWN:

19 **Q.** Mr. Barnes, I've handed you what has previously been
20 marked Coalition Plaintiffs' Exhibit 4, and for the record,
21 this is a selection of Coalition Plaintiffs' Exhibit 4,
22 Pages 11 through 22.

23 Do you recognize this document?

24 **A.** Yes, sir, I do.

25 **Q.** And it is the logic and accuracy procedures of the

1 Secretary of State Version 1.0; correct?

2 **A.** It is.

3 **Q.** Has this been changed since January 2020?

4 **A.** I do not believe it has been altered substantially since
5 January 2020. I feel like there was one slight edit made after
6 '20, but I could be mistaken.

7 **Q.** Okay. Now, there are a lot of different items in the
8 logic and accuracy procedure that I don't need to go over. I
9 want to focus instead on what is being tested, how many races
10 are being tested.

11 Are you with me?

12 **A.** Okay.

13 **Q.** Under the logic and accuracy procedures, how many races
14 need to be tested on each BMD?

15 **A.** What we -- when we in our capacity at CES for the
16 Secretary of State's office instruct any county on the
17 procedures of logic and accuracy testing in relation to a BMD,
18 we frame the process in a way that is similar to how the
19 county, we assume, will be testing their equipment on a
20 precinct or polling location basis.

21 And we instruct the attendees of our class, if you have
22 five BMDs that you plan to distribute to a polling location,
23 that what we want them to do is on the first BMD, they are
24 going to pull up if it is -- let's say it is a primary election
25 like we have upcoming. You'll have a Republican ballot and

1 you'll have a Democratic ballot style within that polling
2 location.

3 What we're going to then go through the process of doing
4 is that on the first BMD, we're going to bring up, we'll say,
5 the Republican ballot first. And then on that particular
6 machine, we'll have them vote on the first candidate and
7 produce a ballot.

8 Then they will proceed to the second machine, and on the
9 second machine, they are going to produce that same ballot, but
10 that second machine, they are going to mark the second
11 candidate in that contest.

12 On the third machine, they are going to bring up that same
13 ballot style again and they are going to vote for the third
14 candidate.

15 And we're going to make our way from machine to machine,
16 position to position, so at the end of the process, each
17 individual machine, depending upon how many candidates there
18 are in a given race -- because it is the contest that has the
19 most candidates that is going to create the minimum of how many
20 minimum number of ballots may be created -- so that we test
21 every position in every ballot style associated to that
22 election.

23 **Q.** But do you test each machine for every race?

24 **A.** It is -- it is hard to explain, but we test every -- we
25 test every ballot style for that election, and we test every

1 vote position, and we make our way as efficiently as possible
2 through all the machines.

3 So one machine, we may test five positions within a
4 particular race. The next machine, we may test four positions
5 based upon the movement through the ballot styles. So it is
6 never a given going into the testing environment how many
7 individual ballots or how many positions will be tested from
8 machine to machine.

9 **Q.** But you do not and the counties do not test each BMD --
10 each BMD for all offices and all questions; right?

11 **A.** Every county looks at every question, every office, every
12 candidate. How they go about doing that, each individual
13 county goes through that process to figure out what is best --
14 which meets the minimum, which is what the guides outline is
15 the minimum.

16 And then some go beyond that. They will test every
17 individual ballot on every individual machine, every individual
18 candidate, but some don't.

19 **Q.** But the requirements that you described, the minimum does
20 not require that each BMD is tested for all offices and all
21 questions; right?

22 **MR. TYSON:** Objection, Your Honor, the use of the
23 term requirement. I think Mr. Barnes has explained very
24 clearly what the process is. I think it is asked and answered,
25 and the term requirement assumes a level of control over the

1 Secretary's office as a legal basis over the county's.

2 MR. BROWN: Your Honor, I will get to the
3 jurisdictional oversight over logic and accuracy testing. I'm
4 asking him to explain his prior answer.

5 THE COURT: All right. Go ahead and ask him -- is
6 there a particular page or section you're referencing?

7 MR. BROWN: The procedures are very detailed.

8 THE COURT: I remember that, but is there a
9 particular example?

10 I mean, putting aside the word require, although I
11 think there is some State authority in this connection.

12 But nevertheless, are you -- let me just say, when
13 you look at this, the logic and accuracy procedures, are they
14 generated by your office or by a different office?

15 THE WITNESS: They are generated by our office.

16 THE COURT: Okay. So which section are we talking
17 about that identifies exactly what you think best -- how you
18 determine what the minimum is that has to be done, or is it all
19 of the sections?

20 It has been a while since I looked at this document.

21 BY MR. BROWN:

22 **Q.** Do you know where it is in here?

23 Look at Section D, testing the BMD and printer.

24 **A.** Section D does outline a specific example.

25 **Q.** Right. And what you described is that just sort of -- yes

1 or no, the testing that is described in this document does not
2 require that each BMD be tested for all races and all
3 questions?

4 **A.** What this document outlines, in my mind, is that the BMD
5 will produce a ballot, that ballot will have a specific vote
6 placed on it and then produced by the BMD. The next BMD that
7 is set up for distribution to the same location may bring up
8 that same ballot and continue through the contest in the
9 different candidates, or it may bring up the next ballot style
10 that is needed in the polling location.

11 And through that exercise of using multiple BMDs
12 throughout the entire cycle, you will produce a result for
13 every contest and every candidate in every contest. That may
14 not be done by every single BMD, but it will be tested through
15 the polling location.

16 **Q.** Now, you know that Georgia law, however, requires that
17 each electronic ballot marker shall be tested to ascertain that
18 it will correctly record the votes cast for all offices and on
19 all questions?

20 MR. TYSON: Objection, Your Honor. Calls for a legal
21 conclusion.

22 THE COURT: He's asking him does he know that.

23 BY MR. BROWN:

24 **Q.** Do you know that -- do you know what Georgia law requires
25 with respect to logic and accuracy testing?

1 **A.** Georgia law -- excuse me. Georgia law requires that logic
2 and accuracy testing be performed prior to election. That is
3 my recollection of the law.

4 **Q.** And do you know how many races and how many questions for
5 each BMD are supposed to be tested in logic and accuracy
6 testing under Georgia law?

7 **A.** My recollection is that all the contests on the ballot are
8 to be tested, all the vote positions are to be tested in the
9 law -- in the ballot.

10 **Q.** On each machine?

11 **A.** My recollection is every contest, every position.

12 **Q.** Answer my question.

13 MR. TYSON: Your Honor, the --

14 BY MR. BROWN:

15 **Q.** You keep on giving back half of my answer, and I -- with
16 respect --

17 THE COURT: I'm going to allow him to continue the
18 cross-examination.

19 BY MR. BROWN:

20 **Q.** Georgia law requires all races and all questions be tested
21 on each BMD; right?

22 MR. TYSON: Objection. Calls for a legal conclusion.

23 THE COURT: Do you know one way or the other, not as
24 a matter of law, but based on your training, experience, and
25 your role as the leader of the elections unit that you are in

1 charge of?

2 THE WITNESS: My belief is, is that the testing of
3 the BMD to bring up the ballot style desired, check the vote
4 position, generate a ballot, and presenting that and going from
5 machine to machine within a polling place and testing all
6 positions on all ballot styles, using all of the equipment in
7 that polling location, is upholding to the law. That is my
8 thought.

9 THE COURT: All right.

10 BY MR. BROWN:

11 Q. Now, you have given testimony in this case in the past
12 about logic and accuracy testing; correct?

13 A. Correct.

14 Q. And the subject of logic and accuracy testing was
15 addressed by the judge, Judge Totenberg, in an order in this
16 case.

17 Are you familiar with that?

18 A. I am not.

19 Q. After the Judge issued an order in October of 2020 that
20 addressed the adequacy or inadequacy of the State's L&A
21 testing, did anybody in the State's apparatus come to you and
22 say anything to this effect, that is, the Judge has issued a
23 ruling that is critical of our L&A testing. You need to do
24 something to improve it?

25 Did anybody say anything to that effect to you at any time

1 from October 11, 2020, until yesterday?

2 **A.** I do not have a recollection of that conversation. It
3 doesn't mean that it didn't happen, but I don't recall.

4 **Q.** Do you know of any material changes that were made to the
5 logic and accuracy testing after Judge Totenberg's October 11,
6 2020, order?

7 **A.** Again, same answer. I just do not recall.

8 **Q.** Now, jurisdictionally, if this could be deemed as cutting
9 corners, is cutting corners above your pay grade, or would you
10 have authority to improve the logic and accuracy testing to
11 meet some of the comments that Judge Totenberg had in her
12 decision?

13 MR. TYSON: Objection, Your Honor. Calls for legal
14 conclusion as to jurisdiction, and then cutting corners is
15 vague and not defined. I think Mr. Brown could ask a question
16 of Mr. Barnes, but that is not an appropriate question.

17 MR. BROWN: I'll take the cutting corners out of the
18 question, Your Honor.

19 THE COURT: Well, jurisdiction also is sort of -- you
20 don't need to use jurisdiction either, so just restate your
21 question.

22 MR. BROWN: Sure.

23 BY MR. BROWN:

24 **Q.** Mr. Barnes, is it your job to improve the logic and
25 accuracy testing, or is that someone else's job?

1 **A.** I play a role in helping write the procedures. I will
2 make suggestions and provide them to my leadership for
3 advisement and discussion.

4 **Q.** But if somebody -- where does the buck stop with logic and
5 accuracy testing at the Secretary of State's office or at the
6 SEB?

7 **A.** The SEB sets the rules for what is required under logic
8 and accuracy testing. The Secretary of State's office has
9 developed a set of procedures based upon what is on the State
10 Election Board rules to help guide the counties on the
11 execution of logic and accuracy, but the execution and the
12 performance of logic and accuracy is a county function.

13 **Q.** Are you aware of any action by the State Election Board to
14 address the concerns that are articulated by Judge Totenberg in
15 her October 11, 2020, order?

16 **A.** I do not recall any.

17 **Q.** Let me change topics quickly.

18 You testified that Coffee County's EMS server and ICC were
19 picked up from Coffee County in 2021 because the password
20 didn't work; correct?

21 **A.** Correct.

22 **Q.** What kind -- have you -- is this the only EMS server and
23 ICC that you have ever picked up from any county?

24 **A.** It is not.

25 **Q.** Typically, what sort of paperwork is generated by your

1 office to document the removal of an EMS server and ICC from a
2 county and replacing it?

3 **A.** We have instituted the use of a chain of custody form to
4 better guide and provide -- provide transparency of that
5 movement. We have not, however, always used that chain of
6 custody form, but we did perform an acceptance test on any new
7 server that we put into place, and we would document the
8 installation of that server into that jurisdiction using that
9 acceptance test paperwork.

10 **Q.** But you did not have any chain of custody paperwork for
11 the removal of the EMS and the ICC from Coffee County in 2021;
12 correct?

13 **A.** At that time, we did not.

14 **Q.** What did you do with the EMS server and the ICC after you
15 got it back from Coffee County? Did you re-purpose it?

16 **A.** No, we did not. We placed it into a card key access room
17 within the center for elections systems.

18 **Q.** And it was there with all of the servers that you picked
19 up from other counties?

20 **A.** It stays in that card key accessed environment. Anything
21 that we pick up from a county, that is where it goes.

22 **Q.** Okay. And how many -- how much time was spent by your
23 staff trying to get around the password issue in Coffee County
24 before it was taken back to CES?

25 **A.** I don't recall how much time was spent on the ground in

1 Coffee County in that process.

2 **Q.** It is just a Windows password; right?

3 **A.** It is an application password. It is when you -- or not
4 application password. It is when you are logging into the
5 device. It is expecting a password to gain access into the
6 desktop so that you can then gain access to the applications.

7 **Q.** But that is something that the SOS' IT people could get
8 around; right?

9 MR. TYSON: Objection, Your Honor. I don't think we
10 have a foundation for what the capabilities of the IT office
11 are. Also, we're now almost at the 20-minute mark of
12 Mr. Brown's questions. Mr. Barnes was cross-examined
13 extensively by Mr. Sparks on the issue of the EMS server and
14 the ICC from Coffee County, so we would just again object on
15 that basis for additional examination on that same topic.

16 THE COURT: Are you almost done?

17 MR. BROWN: I'm almost done.

18 THE COURT: All right.

19 THE WITNESS: What was the question again, sir?

20 BY MR. BROWN:

21 **Q.** It was open-ended.

22 Was that something that the SOS' IT people could have done
23 quite easily; right?

24 MR. TYSON: Same objection.
25

1 BY MR. BROWN:

2 Q. If you know?

3 A. Well, I know the SOS IT people didn't have the passwords.
4 Those were maintained by my office. But I can't speak to how
5 quickly or easily they may have been able to access the system.

6 Q. And who made the decision to pick up the Coffee County
7 server? Was that you or someone else?

8 A. That was me.

9 Q. Anyone else involved in that decision?

10 A. Once the decision was made, I notified our general counsel
11 that it was being picked up.

12 Q. Anybody else?

13 A. No, sir.

14 Q. Okay. Thank you.

15 CROSS-EXAMINATION

16 BY MR. OLES:

17 Q. Good afternoon, Mr. Barnes. I'm David Oles. I represent
18 Ricardo Davis, and I will try to be brief, but I do have a few
19 questions.

20 I want to take you back to the incident that occurred at
21 the Center for Election Services when it was still housed at
22 KSU back in 2017 or thereabout, and I'll just refer to that as
23 the 2017 incident if that is okay with you.

24 A. Okay.

25 Q. Now, as I understand it, earlier you were asked a question

1 or two about this.

2 And you stated something to the effect that you did not
3 know how that intrusion had happened; is that fair?

4 **A.** Yes.

5 **Q.** Okay. Are you familiar with a web content application
6 called Drupal?

7 **A.** I have heard the name Drupal. I know it is a web design,
8 or at least from my opinion, an application that is used to
9 design web pages.

10 **Q.** Okay. Are you aware -- so you are aware that Drupal was
11 deployed in the CES and at Kennesaw State?

12 **A.** My recollection from Kennesaw State Center for Elections
13 configuration is that Drupal was used to develop the web portal
14 or the web page for the Center for Election Systems at Kennesaw
15 State.

16 **Q.** Okay. So do you have any knowledge then of whether or not
17 that Drupal system was generally attributed to having caused
18 the defect that resulted in that intrusion?

19 **A.** I don't know.

20 **Q.** Okay. You don't recall having made any investigation into
21 that?

22 **A.** I don't recall.

23 **Q.** You don't know then whether or not the Drupal system would
24 have allowed the kind of attack that Logan Lamb was reported to
25 have made?

1 **A.** I do not know.

2 **Q.** Did anyone -- do you recall whether anyone at the
3 Secretary of State -- then Secretary of State Kemp's office,
4 now Secretary of State Raffensperger's office, expressed any
5 concern directly to you about your role in that incident?

6 **A.** I do not recall anyone expressing anything to me in my
7 role.

8 **Q.** Okay. Thank you.

9 Did you -- once you found out about that incident, did you
10 make any effort to determine how long of duration the intrusion
11 or access may have taken place?

12 **A.** At the time of that -- excuse me. At the time of that
13 incident, I was the director for the Center for Election
14 Systems at Kennesaw State, but I worked under the executive
15 director of that facility. And when that action took place, it
16 was the executive director that oversaw the incident response
17 to that situation.

18 **Q.** Did you yourself have any -- or did you yourself or anyone
19 at your direction have any involvement in that incident
20 response?

21 **A.** We had an IT support person on-site at CES that worked
22 with the executive director, but that was -- and I knew that
23 they were working on things. But what they were doing, how
24 they were doing it, to what degree they were doing it, I did
25 not know.

1 Q. So you don't have any knowledge of whether or not the
2 server audit logs were examined regarding the unauthorized
3 breach?

4 A. I do not know what actions were taken by the IT support
5 tech or anybody from Kennesaw State University IT support.

6 Q. Okay. Do you know whether or not someone actually
7 undertook to find the source of the unauthorized breach?

8 A. I know that there were actions taken. I don't know what
9 actions were being taken.

10 Q. And so you then, for example, would not know whether or
11 not anyone examined the file update timestamps?

12 A. I don't know. I do not know.

13 Q. Do you know that whether following that incident you or
14 anyone on your staff was involved with assessing the impact of
15 the unauthorized breach?

16 A. I do not recall.

17 Q. Okay. Following that breach and even into your new role
18 once you were hired by the State, has anyone -- have you or
19 anyone on your staff created or implemented a remediation
20 strategy to address similar unauthorized breaches?

21 A. Strategies of that sort are handled by SOS IT.

22 THE COURT: They are handled by who?

23 THE WITNESS: SOS IT, Secretary of State IT.

24 BY MR. OLES:

25 Q. So are you then aware -- are you saying you're not aware

1 of whether or not there has been any remediation strategy
2 implemented?

3 **A.** I'm saying I'm not involved in those things.

4 **Q.** But you are involved in building the election projects;
5 correct?

6 **A.** I'm involved in the election-building process, yes.

7 **Q.** In that role, wouldn't you expect to be made aware of any
8 such remediation strategies?

9 **A.** State it -- what is your question again?

10 **Q.** My question is: In your role with the responsibilities
11 that you now have, wouldn't you expect to have been made aware
12 if SOS IT developed remediation strategies for that?

13 **A.** Remediation strategies for what?

14 **Q.** For that intrusion and intrusions like it.

15 **A.** Okay. We're still talking about someone accessing the
16 Kennesaw State University web box; right?

17 **Q.** That box at Kennesaw State or any future box, whether it
18 be in the hands of a remote vendor like Kennesaw State or
19 whether in the possession of the department itself.

20 **A.** The Secretary of State IT office sets up the
21 infrastructure for the Secretary of State's office. They set
22 up the infrastructure that we use for distributing information
23 to counties for ballot-building proof -- for ballot proofing
24 purposes that is all maintained by SOS, managed by SOS, and
25 secured by SOS.

1 Q. Okay.

2 A. If something were to happen to that environment, I would
3 assume that SOS IT would notify us since it is something that
4 we use.

5 Q. Okay. So is it fair to say then you have not been
6 notified of any specific steps taken to prevent any future
7 similar intrusions?

8 A. What we are using today is a completely different system
9 than what we used then, and I'm entrusting of SOS IT of
10 maintaining a proper infrastructure.

11 Q. One last thing.

12 I believe you testified earlier that you oversee ballot
13 building; is that correct?

14 A. That's correct.

15 Q. Okay. Are you aware of a ballot definition problem that
16 occurred in DeKalb County in May of 2022 during the primary or
17 in relation to the primary?

18 A. I am aware of a situation that developed in May of '22 in
19 relation to a county commission district race in DeKalb County,
20 if that is what you are referencing.

21 Q. Okay. And is it your recollection that in that case that
22 the system as it was implemented allowed or resulted in the
23 wrong candidate being declared a winner in that commission
24 race?

25 A. It was my recollection that -- on election night that they

1 began tabulating the votes and saw that something did not
2 appear to be proper, and then they raised a concern for us to
3 begin trying to -- in trying to determine what may be a cause.

4 **Q.** And did you determine what was responsible for that?

5 **A.** We did.

6 **Q.** And what was that, sir?

7 **A.** When the original election project was constructed for the
8 County Commission District 2 race in DeKalb County, I believe
9 there were four qualified candidates at the time that the
10 ballot was constructed and the election project was distributed
11 to the jurisdiction.

12 The jurisdiction loaded the elections project onto their
13 device and began creating the election media that was needed to
14 program the BMDs and their ICPs. DeKalb County is a quite
15 large jurisdiction in the state of Georgia, so they have a
16 number of devices that they have to prepare in advance of the
17 election. They start off with their advanced voting machines,
18 and then they proceed updating all of their election day
19 devices.

20 After they began the process of programming and loading
21 their BMDs, they had one of the candidates in the county
22 commission district to -- I believe it was the second listed
23 candidate. I don't remember their name -- withdraw from the
24 contest. The county at that point in time within the election
25 project signified the candidate as being a withdrawn candidate,

1 and they continued the process of setting up their equipment.

2 On the first day of advanced voting, they started voting
3 and it came to light that one of the Republican party questions
4 on the Republican party ballot -- I believe it was the second
5 question -- was not displaying on the BMD, and it should have
6 been. So the county reached out to our office to ask, how can
7 they resolve that? How can they make sure that the question be
8 displayed on the BMD as it should?

9 So our office walked them through the process of making
10 sure that that project was set up properly to display that
11 contest. To do that required to create a new election data
12 file to be loaded to the BMDs. What was lost in that process
13 was the recollection that the second candidate in the County
14 Commission District 2 had been set to the withdrawal status so
15 that when the county re-created the election media to load onto
16 the BMD, when they loaded that onto the BMD at that point in
17 time, the County Commission District showed three candidates
18 and not four candidates. The ICPs, the scanners that tabulate
19 the results, had been programmed to process four candidates,
20 not three candidates.

21 So on election night when they began to extract results
22 from the tabulators, the tabulators would print out a tape that
23 would show four candidates, and it showed votes going into
24 three of the four slots. And that is what created the
25 situation was the fact that at the time that the Republican

1 ballot was corrected to show the proper question, there was
2 lack of memory of the fact that a candidate had been put into
3 withdrawn status.

4 **Q.** And I appreciate that very detailed explanation.

5 And the upshot of this is that when the race was run,
6 there was a candidate that did not properly get the votes that
7 should have gone to them; is that not correct?

8 **A.** The votes were not reported properly. The votes were
9 present on the print-outed ballots on the optical scan ballots
10 and were able to be tabulated by the county through hand-count
11 tabulation.

12 **Q.** Thank you, sir.

13 MR. TYSON: Your Honor, we don't have any questions
14 for Mr. Barnes at this time. He is on our witness list,
15 though, so we would ask that he be excused for today.

16 THE COURT: Are you expecting to re-call him?

17 MR. TYSON: We are, Your Honor, I think, at this
18 point.

19 THE COURT: I had some questions, but I don't really
20 want to question him if you haven't had -- if you're planning
21 to do it, I would rather do it at the conclusion of --

22 MR. TYSON: Well, I guess I want to make sure, Your
23 Honor -- I could see a situation where we don't, so it may be
24 better if you have questions to go ahead and ask those now.

25 MR. BROWN: Your Honor, just as a matter of

1 housekeeping, I neglected to move to admit this exhibit. I
2 would like to do so now, and I move to admit Coalition
3 Plaintiffs' Exhibit 4, Pages 11 through 22.

4 THE COURT: Are there any objections?

5 MR. TYSON: No objection.

6 THE COURT: All right. It is admitted.

7 EXAMINATION

8 BY THE COURT:

9 **Q.** Mr. Barnes, were any of the Court's orders issued in
10 connection with preliminary injunction motions in this case
11 that were issued, I think, between 2018 and 2020 provided to
12 you relative to the operation of the election office and as
13 well as relative to the breach in -- that had occurred while
14 you were at the Kennesaw -- your program was at Kennesaw
15 University?

16 **A.** As long as this case has been ongoing, any information
17 that the Court has ordered to the Secretary of State's office
18 has been provided to us through general counsel, so I can't
19 think of a time where I got a specific order from the Court on
20 execution that any guidance that was given to me was given
21 through general counsel and leadership in the Secretary of
22 State's office.

23 **Q.** All right. I'm not talking about an order directing you
24 to do anything. I'm talking about -- and maybe this is just
25 probably a term of art in the world of law.

1 Were you ever provided with the portions of the written
2 opinions I issued that dealt with the operation of the election
3 office or the breach that occurred at Kennesaw and within
4 your -- the Secretary of State's election office there that was
5 contracted to -- essentially, out to Kennesaw?

6 **A.** Your Honor, I do not recall.

7 **Q.** You don't recall at all, or you just -- do you recall ever
8 learning about any of the discussion regarding the operation --
9 the operations of the election office, and let's say, first of
10 all, as to what happened at Kennesaw and the breach, that there
11 was such a -- the dynamics of what occurred with that breach or
12 anything about it, or the fact that no one would look at the
13 soft -- the serious issues that had been raised as to
14 out-of-date software?

15 **A.** Again, I guess I'm a little confused.

16 During the continuing litigation period, anything that was
17 needing to be held and we were told that we were needing to
18 hold stuff, we would hold stuff, we would retain stuff, keep
19 hold of stuff so that it was always available to the Court if
20 the Court needed it, if anything was needed for this case.

21 In relation to actions taken, we would always take actions
22 or be directed by our office, our leadership, our general
23 counsel, that if we needed to adjust anything based upon any
24 Court decision.

25 **Q.** So I gather from what you are saying that -- were you

1 ever -- well, let me just start again.

2 Were you made aware that there were serious implications
3 of using profoundly out-of-date software in the operating
4 system or in the election system?

5 **A.** We were made aware that there was -- that the Court had an
6 opinion on the actions the State were taking, and then the
7 State had begun the process of an RFP to try to transition away
8 from the previous voting system to the current voting system at
9 play.

10 So I believe a lot of what was intertwined between those
11 actions, that the State began taking action to replace its
12 voting system when -- when concerns were raised about the State
13 or the lack of update in the DRE system prior to our transition
14 to the BMD-based system.

15 **Q.** What about the -- were you aware of -- that there was a
16 profound need for replacement of out-of-date Microsoft
17 operating patches and the fact that the system had not -- was
18 relying on an operating system and software that was profoundly
19 out of date?

20 **A.** The preceding system, the DRE system was an older system
21 that had been procured in 2002 and was still running under a
22 certified bundle which included an operating system that was
23 out of date, but it was the certified version that was
24 certified at the federal level and at the state level, and it
25 was still in use and still in operation.

1 So to change -- to change the operating system at that
2 time would have required a new system.

3 **Q.** You're talking about the voting system? You're not
4 talking about Microsoft?

5 **A.** Right. What I'm saying is, is that the voting system is
6 certified to the software level, it is certified to the
7 operating system level, and if you update the operating system
8 to a different version, that -- that federally certified system
9 is no longer federally certified. It loses its federal
10 certification at that standpoint. It has to be resubmitted to
11 federal testing to then gain a new federal certification number
12 to then be stated as certified.

13 **Q.** And just -- I mean, I really hate to go back in time to
14 this when I have some concerns about what you are stating.

15 But did, in fact, you or any of your colleagues go and
16 attempt to deal with this rather than use a system that was
17 known to be subject to some serious hacking? I don't mean
18 what -- the hacking at your university, but I mean just
19 generally, and that is why there had been major patches done?

20 **A.** In 20 -- in 2012, '13, '14, '15, there were continual
21 discussions between the vendor at the time, which was Election
22 Systems & Software, and the Secretary of State's office about
23 what new systems may be coming down the road, what enhancements
24 to the systems.

25 And at that point in time, the State had decided not to go

1 through a procurement process or to install any new updates
2 because the certification had not lapsed on any of the systems.

3 **Q.** So even if the Microsoft software was outdated as of 2006,
4 you-all didn't think that was necessary?

5 **A.** Well, the vendors had not even submitted anything back to
6 the federal for testing purposes. We are dependent upon the
7 vendors to provide us the tools to execute the elections, and
8 our particular vendor at the time had not submitted anything at
9 that point.

10 There was -- also in that point, there was a -- there was
11 a lot of change going on in relation to who certifies, did they
12 have a quorum to meet to actually go through and be able to
13 certify equipment? It was a -- it was -- it was a
14 developmental time, a change in voting system guidelines, and
15 there was not a lot of new product being generated by vendors.

16 **Q.** Well, are you, in fact, the person who is responsible for
17 determining what security measures need to be taken to protect
18 the election system, or is that somebody else?

19 **A.** That is somebody else.

20 **Q.** And, in fact, you're not involved in it at all, you're
21 sort of kept out of it; is that right?

22 **A.** Yes, ma'am.

23 **Q.** Okay. And so who are the folks who make those decisions?

24 **A.** The people that maintain for the Secretary of State's
25 office their infrastructure security measures are the Secretary

1 of State's IT division.

2 **Q.** And who there, historically, in the last ten years has
3 been responsible for that?

4 **A.** Merritt Beaver has been our CIO. He just recently
5 retired.

6 **Q.** Anyone else who worked directly with you?

7 **A.** I would still say Merritt. I would leave it with Merritt
8 Beaver.

9 **Q.** And when you were at -- working at -- at Kennesaw
10 performing the same functions on behalf of the State, did you
11 ever interface with the security and IT computer folks at
12 Kennesaw because it was their machines that were being run?

13 **A.** We -- the Center for Elections Systems at Kennesaw State
14 interacted with KSU IT really more like a step after the breach
15 that was discussed as opposed to prior. There was not a
16 tremendously good working relationship between our previous
17 executive director at Kennesaw State and the IT department
18 within Kennesaw. They communicated, they shared information,
19 but Kennesaw IT did not really involve themselves a lot with
20 the Center for Election Systems at Kennesaw.

21 **Q.** And were you aware that they were very critical of what
22 had happened in terms of the software -- the operating software
23 and the out-of-date Microsoft patches running it that were --
24 placed the university at risk?

25 **A.** I don't -- I can't recall Kennesaw State IT ever

1 addressing the voting system in any way, shape, or form.

2 **Q.** Well, I'm not just talking about the voting system. I'm
3 talking about the operating system that --

4 **A.** The operating system -- excuse me. The operating system
5 in question is tied directly to the voting system. It was not
6 an operating system that was used on the functional systems.
7 It was the operating system in which the application was
8 running that was powering the voting system prior to 2020.

9 **Q.** And did you ever go back and look at what the whole story
10 was about the Drupal application that was one of the major
11 concerns?

12 **A.** I did not.

13 **Q.** Okay. Did you view that as somebody else's
14 responsibility?

15 **A.** That -- the understanding of how Drupal operates and
16 worked, that's -- I do not understand that without having a
17 computer background.

18 **Q.** Okay. And then I just wanted to ask you a few questions
19 about other things.

20 My understanding from your testimony is that -- and I
21 might be wrong -- is that Dr. Halderman's report that was, I
22 think, originally filed in 2021 in the record in this case,
23 that you never received a copy of that or you never read --
24 reviewed one?

25 **A.** I was never provided a copy of that report.

1 Q. Okay. Were you ever furnished with copies of the
2 Fortalice reports looking at security and operations issues?

3 A. I was not.

4 Q. And with respect to the logic and accuracy testing, I just
5 want to sort of make sure that the record is clear and I
6 understand things clearly, is that when you do logic and
7 accuracy testing, you're looking at -- when you test Computer 1
8 in your example, though they are out of five, but often if
9 you're in a major urban area, there's going to be a lot more
10 than five.

11 You're looking -- you put the model ballot in, and you're
12 going to test it for one race; is that right, for instance?

13 A. We're testing every race on that particular ballot. We
14 don't just look at one race on the ballot. We interact with
15 every race on the ballot at the time that we are interacting
16 with that device.

17 Q. Right. But -- all right. You put the ballot in. There
18 are 40 -- there are 40 different races. And in computer
19 number -- in the Ballot Machine Number 1, are you running every
20 race?

21 A. Yes, ma'am. We are looking at every race on every page of
22 the ballot.

23 Q. And then you do Computer Number 2.

24 Which ones are you looking at that? You are saying every
25 race?

1 **A.** We are looking at every race. We may be voting for a
2 different candidate in every race, but we are still interacting
3 with every race on the ballot.

4 **Q.** Are you in each instance, though, looking at -- for
5 instance, you pick Sally Sue for governor on the first race.
6 Let's say that is listed and it is not a presidential year.
7 And John Smith on Computer 2, are you -- those are the sole
8 ones, and you're not looking -- when you get to Number 2 -- or
9 let's say -- let's just look at Number 3.

10 You're not going back to vote Sally Sue, are you? You are
11 not testing it then for Sally Sue?

12 **A.** It is dependent upon -- if the governor's race has three
13 candidates, then we are going to produce Ballot 1 with
14 Candidate 1, Ballot 2 with Candidate 2, Ballot 3 with
15 Candidate 3.

16 **Q.** What happens when you get to machine number --

17 **A.** When I get to Machine 4, I'm going to start back with
18 Number 1 because I've got to create a ballot from Machine 4.
19 I'm going to bring up that ballot, I'm going to test now
20 Candidate 1 and create a new ballot. When I get to Machine 5,
21 I'm going to bring up the ballot again, I'm going to vote --
22 cast a vote for Candidate 2.

23 If there was a sixth machine, I would bring up the ballot
24 again and vote again for Candidate 3 because I want to create a
25 ballot from every individual machine, at least one. But in

1 that process, I have actually created a test deck that will
2 have multiple votes for the candidates listed. And that test
3 deck is then what is sent through the scanner for tabulation
4 purposes.

5 And then the test deck is retained, and it shows the votes
6 produced from the BMDs and is compared against the test -- the
7 tabulated report from the scanner. And if I had six machines
8 with a three-candidate race, I should see two votes for each
9 individual listed candidate.

10 **Q.** So there are two votes that you have been able to see, but
11 the four other machines, you haven't tested it on all of the
12 offices -- I mean, basically, you're testing on different
13 positions on different machines; is that right?

14 **A.** That's correct, but I have used the exact same data file
15 to program each individual machine, so each machine has been
16 loaded with the exact same data. And then I'm going to go
17 through a test process. So the data file is then different
18 from Machine 1, 2, 3, 4, 5, or 6, and I am creating a test deck
19 that shows markings for each -- for each candidate in each race
20 multiple times.

21 **Q.** And were you ever made aware of some of the critiques of
22 that methodology that have been articulated by the experts on
23 behalf of the plaintiffs?

24 **A.** I have been made aware that there are people that do not
25 like how we conduct logic and accuracy, and they have an

1 opinion that it needs to be more in depth.

2 **Q.** And have you done anything to determine what the standards
3 are within your peers across the country on logic and accuracy
4 testing?

5 **A.** What I have to try to make sure the counties are aware of
6 is that there are critics of our testing and that if -- you
7 know, I encourage them to not only do what is stated here, but
8 do more. Do more. Put more votes through. Put more test
9 decks through. I encourage them to not only create ballots
10 from the BMD, including their test deck, but also optical scan
11 ballots so that the numbers that are being tabulated by the
12 scanners are not just one, one, one, one, or two, two, two,
13 two, but create variance in the tests so that we can isolate --
14 if there is an issue, that we can isolate it.

15 **Q.** And have you done that orally or in writing?

16 **A.** I have done that orally. I have not done that in writing.

17 **Q.** And when was the last time that you think that you might
18 have done that?

19 **A.** We had a statewide conference just a few weeks ago in
20 December where I believe I discussed logic and accuracy testing
21 again. I could be wrong, but I know I have spoken to the
22 counties within the last year.

23 **Q.** And you may have misunderstood my initial question
24 about -- in this regard.

25 Do you -- have you in any way examined what your peers

1 across the country are doing for the logic and accuracy testing
2 or what the standards are within the profession for that?

3 **A.** I have had discussions with other jurisdictions in regards
4 to the logic and accuracy testing that they do. We all do --
5 we all do it differently, and we try to all learn from one
6 another about, what is an idea that you have that we might be
7 able to add into our process?

8 **Q.** And has -- is it your responsibility or anyone else's
9 responsibility in the Secretary of State's office to do kind of
10 a more systemic review of how the counties are doing fulfilling
11 the mission by state law to do this type of logic and accuracy
12 testing?

13 **A.** The Secretary of State's office and its Elections Division
14 is always communicating with counties and making sure that
15 counties are fulfilling the roles. I know that counties have
16 to submit paperwork back to the Secretary of State's office
17 outlining that the proper tests were performed. The Secretary
18 of State's office will follow up with the counties if they are
19 getting notification in some way, shape, or form that things
20 are not transpiring as they should.

21 So the Secretary of State's office tries to stay in touch
22 with all counties to make sure they are proceeding under the
23 law.

24 **Q.** Has there been any systemic assessment of that?

25 **A.** Not that I am aware of.

1 Q. And with respect to the issues as to equipment in Coffee
2 County, was your last involvement the replacement of that -- I
3 guess it was one or -- one server and some other machine -- I
4 can't remember right this moment.

5 A. In 2021, the election management computer and the ICC
6 workstation computer were replaced. In '22 -- in August of
7 '22, all of the BMDs and all of the ICP scanners were replaced
8 and all of the pollbooks were replaced in Coffee County, so --

9 Q. That was --

10 A. -- in the summer of '22, they were all given new
11 equipment.

12 Q. But that wasn't your direct order; that came out of some
13 other situation, didn't it?

14 A. That was a decision made by the Secretary that he wanted
15 the equipment replaced.

16 Q. And that was after the whole disclosure -- full disclosure
17 of what had happened in Coffee County?

18 A. Yes, ma'am.

19 Q. And what you did was when you -- was in '21 in the spring?

20 A. It was in early spring of '21. It was preceding -- I
21 believe Coffee County had to execute a special election in
22 early summer of '21, I think.

23 Q. And they could not get --

24 A. They could not gain access to their equipment, so that is
25 when we came in.

1 Q. Do you have any thoughts as to why there's such a division
2 between your -- the functioning of your office and that of the
3 office that Mr. Beaver has run, which is more generic as to
4 computer operations?

5 A. I don't know if I understand the question.

6 Q. Well, you say you don't really have any contact with --
7 didn't have any contact much as to -- or interface regarding
8 the matters your unit deals with versus what Mr. Beaver as
9 chief information officer, what that -- how that touched
10 everyone.

11 A. Uh-huh (affirmative).

12 Q. Do you have any -- and that you -- really, in some ways,
13 it sounds like security issues were outside your ambit; is that
14 right?

15 A. Our task within my division of the Elections Division in
16 the Secretary of State's office is to provide support to
17 counties in building their election projects and building the
18 ballots. How that infrastructure is maintained and secured is
19 left up to the SOS IT.

20 THE COURT: Thank you.

21 Okay. Well, may I excuse this witness subject to
22 being re-called?

23 MR. TYSON: Yes, Your Honor.

24 THE COURT: And it's plaintiffs who called the
25 witness on cross.

1 May I do that? Do you have any objections to my
2 doing that at this time?

3 MR. SPARKS: Yes, Your Honor.

4 THE COURT: I'm sorry. All right. Go ahead.

5 Well, you are subject to re-call, so please don't
6 discuss your testimony with anyone else at this time. Thank
7 you.

8 MS. KAISER: Your Honor, plaintiffs will re-call
9 Chris Harvey.

10 THE COURT: You are still under oath.

11 You may proceed.

12 MS. KAISER: Thank you, Your Honor.

13 Whereupon,

14 CHRIS HARVEY,

15 after having been previously duly sworn, testified as
16 follows:

17 CROSS-EXAMINATION (Continued)

18 BY MS. KAISER:

19 **Q.** Good afternoon, Mr. Harvey.

20 **A.** Good afternoon.

21 **Q.** Thank you for rejoining us today.

22 **A.** Thank you for your indulgence and the Court's indulgence.

23 MS. KAISER: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25

1 BY MS. KAISER:

2 Q. Mr. Harvey, can you please review the document I have put
3 before you that's been marked Defendants' Exhibit 446?

4 A. Yes, ma'am, I'm reading it now.

5 I have read it.

6 Q. Do you recognize this document, Mr. Harvey?

7 A. I do.

8 Q. And this is an official election bulletin that you sent to
9 the county election officials and county registrars, and it's
10 dated November 17, 2020; is that correct?

11 A. That's correct.

12 Q. And did you send this in the course of your work as
13 elections director for the Secretary of State's office?

14 A. Yes, I did.

15 MS. KAISER: Your Honor, we would move to admit
16 Defendants' Exhibit 446.

17 MR. TYSON: No objection.

18 THE COURT: It is admitted.

19 BY MS. KAISER:

20 Q. Mr. Harvey, you sent this bulletin to alert the counties
21 in Georgia that multiple counties had reported receiving open
22 record requests seeking data and information such as copies of
23 original software for the voting equipment, copies of any
24 software patches performed on Dominion voting equipment in the
25 state of Georgia prior to the November 2020 election, and

1 copies of any thumb drives provided to the counties containing
2 software or software updates; is that correct?

3 **A.** That's correct.

4 **Q.** And you alerted the counties that under the Open Records
5 Act, providing copies of that type of data and information was
6 not subject to open record requests; is that correct?

7 **A.** That's correct.

8 **Q.** And you stated that, in addition, information that could
9 harm the security of election equipment cannot be provided; is
10 that correct?

11 **A.** Correct.

12 **Q.** And so the State recognized that releasing copies of the
13 original software for the BMD voting equipment or related
14 information software patches, USB sticks, thumb drives that
15 contain that software could harm the security of that election
16 equipment; is that correct?

17 **A.** That's correct.

18 **Q.** And this is stating that the State did not want counties
19 providing to anyone who wasn't authorized to have access to it;
20 is that right?

21 **A.** That's correct.

22 **Q.** And this bulletin was sent out to all 159 counties in
23 Georgia; is that right?

24 **A.** Yes, ma'am.

25 **Q.** Could you turn to Tab 15 in your binder. It is a document

1 that we have marked Plaintiffs' Exhibit 78, and it has been
2 admitted into evidence.

3 **A.** Okay. I'm familiar with it.

4 **Q.** So if you look at the -- it is the third page of the
5 document. There is an email from James Barnes to you dated
6 Friday, May 7, 2021.

7 Do you see that?

8 **A.** I do.

9 **Q.** Mr. Barnes reported to you that when he took over at the
10 Coffee County elections office, he discovered a business card
11 from Mr. Doug Logan of Cyber Ninjas at the base of Misty Hayes'
12 computer monitor.

13 Do you see that?

14 **A.** Yes, ma'am.

15 **Q.** And you're aware that Misty Hayes was Mr. Barnes'
16 predecessor at Coffee County?

17 **A.** That's correct.

18 **Q.** What was your reaction when you received this email?

19 **A.** You know, I had sort of two thoughts. One was -- you
20 know, I thought of my own desk. I have got business cards at
21 my own desk from people I have never met that get sent to me
22 that I pick up at shows and people put in my hand. I was
23 hopeful that maybe somebody had stopped by the office and just
24 left a card, but I was also somewhat concerned that somebody
25 had come to the office and maybe done something.

1 So on the other hand, I thought, you know, the counties
2 are -- should be crystal clear on the procedure for granting
3 access or not granting access to the sensitive equipment, so I,
4 frankly, wasn't immediately -- I won't say -- I was concerned,
5 but I wasn't -- I wasn't really in an emergency mode because
6 I -- again, for those reasons because I knew people accumulated
7 business cards from all sorts of places, and I knew that the
8 counties were clear on the security of the system.

9 But at the same time, I forwarded it on to Frances Watson
10 and say, hey, we need to -- you definitely need to look into
11 this and confirm either way whether it is my worst fear or my
12 hopeful -- hopeful feelings that it was just something that
13 somebody had left there.

14 **Q.** Your worst fear was that Misty Hayes -- Misty Hampton had
15 actually been in touch with Doug Logan of Cyber Ninjas; is that
16 right?

17 **A.** Well, I don't know specifically she had. Somebody else
18 from the office could have. Somebody else could have given
19 access.

20 But yeah, my -- the worst-case scenario was that somebody
21 would have violated the security standards and given a third
22 party access to sensitive election equipment.

23 **Q.** And you -- you mentioned this, but you copied Frances
24 Watson in your response to Mr. Barnes; correct?

25 It is on the front page of this document.

1 **A.** Yes, ma'am.

2 **Q.** And you say, I think it might be prudent to see if there
3 has been any contact between the person on the card and anyone
4 in your office and/or if they have had any access to any of
5 your equipment.

6 Do you see that?

7 **A.** Yes, ma'am.

8 **Q.** Did you think it was important for Ms. Watson to
9 investigate this incident?

10 **A.** Yes.

11 **Q.** Did Ms. Watson open an investigation into this report?

12 **A.** Yes, she did.

13 **Q.** What do you know about that investigation?

14 **A.** Only what I've read in the news and seen on the news and
15 in that kind of stuff. This was May 7th. My last day in the
16 office was at the end of May, so I wasn't around while the
17 investigation was really taking off.

18 But all I know is really what I have read and seen in the
19 news.

20 **Q.** So after referring Mr. Barnes' email to Ms. Watson, did
21 you ever follow up with Mr. Barnes about this report?

22 **A.** It seems like we may have had a phone call.

23 **Q.** Do you recall when that phone call took place?

24 **A.** I think it would have been in close proximity within a
25 couple of days or a day or so.

1 Q. What do you recall discussing with Mr. Barnes during that
2 phone call?

3 A. I think I may have told him that there was an
4 investigation. I do remember talking to him on the phone about
5 this. Whether -- and I have to believe -- I strongly believe
6 that it was after I got the email. It is possible he called me
7 first and then sent me the email as a way of kind of providing
8 the information.

9 But I know we had a conversation about it. He was new in
10 the office and really didn't know what, if anything, had
11 happened with the card.

12 Q. But he felt that it was concerning enough to raise it to
13 your attention; correct?

14 A. Yeah, he thought it was certainly serious enough to raise
15 it to my attention. I thought it was serious enough to raise
16 to investigations.

17 Q. So you recall having just one phone call with Mr. Barnes
18 about this incident?

19 A. I recall one. I can't say whether or not there may have
20 been others. I talked to so many election officials in the
21 course of a day from different counties about everything, so I
22 would -- I didn't have a ton of conversations with Mr. Barnes.
23 He was relatively new, which is why I remember talking to him
24 on the phone. I remember talking to him at least once, maybe
25 two times, but just a handful.

1 Q. But you don't recall specifically whether that phone call
2 was before you received his email or after you received his
3 email?

4 A. I don't, but I'm confident that it was in close proximity
5 either before or after. I tend to think it was after the
6 email, but that is the best I can do.

7 Q. And as far as the contents of that phone call, again, you
8 said you may have told him there was an investigation.

9 Is there anything else you recall from your conversation
10 with Mr. Barnes on the phone?

11 A. I really don't. No, I don't. I'm sorry.

12 Q. Did you ever have any conversations with Frances Watson
13 about this report?

14 A. I'm almost positive I did. Frances and I spoke very
15 often. Our offices were on the same floor. We would talk
16 regularly, both -- she would come to my office more often than
17 I would come to hers. We would see each other in the hall and
18 talk about different things. We had conversations daily about
19 different things.

20 So I -- again, I don't know that I recall a specific
21 conversation with her about any specific thing. But based on
22 how we did things and investigations, it would not surprise me
23 at all to know that I spoke with her about this. But I can't
24 recall specific conversation because they were so -- I mean, I
25 would have -- I had seven conversations with her in a day,

1 sometimes more.

2 **Q.** Do you recall Ms. Watson giving you any information about
3 the investigation that began -- that was initiated with respect
4 to getting this report from Coffee County?

5 **A.** The only thing I recall when I was still at the Secretary
6 of State's office was that she was going to start an
7 investigation. I don't recall any results of an investigation
8 while I was at the Secretary of State's office.

9 **Q.** Are you aware of any results of the investigation since
10 leaving the Secretary of State's office?

11 **A.** What I have read in the news media, yes, ma'am.

12 **Q.** Are you aware of anyone else in Georgia providing any
13 information related to Georgia's election system to Cyber
14 Ninjas?

15 **A.** No, ma'am.

16 **Q.** Are you aware of any other Georgia counties receiving
17 outreach from Cyber Ninjas after the 2020 election?

18 **A.** I don't think so. Again, in terms of outreach, I probably
19 wouldn't know unless they called me and told me about it.
20 Whether counties received phone calls or emails or written
21 correspondence, I don't know. I don't recall anybody else
22 bringing that to my attention. That is what I recall.

23 **Q.** Are you aware of any other Georgia counties receiving
24 requests for information about the election system from any
25 other individuals or entities who are not authorized to have

1 access to that information?

2 **A.** As far as requests go, I don't think I'm aware of any
3 specific requests. You know, one of the things that prompted
4 this official election bulletin is that counties were getting
5 slammed with so many open records requests and so many requests
6 for information in the midst of doing a re-count, in the midst
7 of doing a hand audit, in the midst of getting ready for
8 runoff, in the midst of a firestorm that we were all barely
9 existing in.

10 I felt it was important that we just sort of remind them
11 not to just -- you know, give to an assistant and say, here,
12 just fill all these and just send stuff out, because that could
13 happen in that kind of high-stress situation where you're short
14 on staff, you are trying to do ten things at once, somebody may
15 get lax and accidentally release something they shouldn't. So
16 we wanted to remind them, hey, you can't -- you can't take your
17 eye off the ball on this stuff.

18 And as far -- to get back to your original question,
19 nothing sticks out in my mind. You know, I think if somebody
20 had told me specifically -- now, if somebody had said, we got a
21 call from Cyber Ninjas, I don't know that that would have
22 really -- and we told them to go away, we're not talking to
23 them. I don't think that would have really stuck in my mind.

24 So I don't -- I don't believe I'm aware of any other
25 county getting any kind of serious -- frankly, any contact with

1 Cyber Ninjas.

2 **Q.** Just to -- my question wasn't just limited to Cyber
3 Ninjas.

4 **A.** I'm sorry.

5 **Q.** It was: Are you aware of any other Georgia counties
6 receiving outreach from any other -- anyone that wasn't
7 permitted to have access to the data or software regarding the
8 election system?

9 **A.** I think my answer is the same. Again, I had so much
10 contact with counties calling, emailing, sending stuff to me.
11 Nothing -- nothing sticks out. But again, if somebody had
12 emailed me something and I said, you know, no, that is not
13 releasable, that record may exist somewhere. But it was
14 nothing on any -- on any remarkable or significant level in my
15 mind or in my recollection.

16 **Q.** And I believe I did limit this question to Cyber Ninjas
17 before, so let me ask it one more time.

18 Are you aware of anyone else in Georgia providing any
19 information related to Georgia's election system to any
20 individual or entity that was not permitted to have access to
21 that information?

22 **MR. TYSON:** And, Your Honor, I'll just object as
23 asked and answered. And also, I think it is vague. To the
24 extent this is such a broad question, I'm not sure it is
25 answerable, honestly.

1 MS. KAISER: Your Honor, I have not asked that
2 question yet. I believe I limited my question to Cyber Ninjas
3 before, and I am asking more broadly.

4 THE COURT: Well, I think you can answer more broadly
5 to the extent you can, but -- if you have some information. If
6 you don't have any or that you can't recall, then you'll say
7 that.

8 THE WITNESS: It is essentially the same as the
9 answer I gave for Cyber Ninjas. I'm not aware of any -- what I
10 would consider a serious effort to do that. Whether somebody
11 got a request, I mean, we got all sorts of crazy emails saying,
12 you know, different things like, I want to see every ballot, or
13 I want to see every system. I mean, there may be something
14 like that out there, but I'm not aware of anything other than
15 this one incident with Cyber Ninjas.

16 BY MS. KAISER:

17 Q. And I just want to make sure that I'm crystal clear in my
18 question.

19 You're not aware --

20 A. From any other entity.

21 Q. I think you're answering about requests.

22 I'm asking now whether you are aware of any other Georgia
23 county providing information in response to such a request.

24 A. Absolutely not. No, ma'am.

25 Q. Mr. Harvey, you're familiar with Dr. Halderman; right?

1 **A.** I am familiar with his name and his reputation.

2 **Q.** And you understand he is an expert in election security
3 who has examined the election equipment that is used in
4 Georgia?

5 **A.** I'm aware of that, yes, ma'am.

6 **Q.** Are you aware today that in September 2020, Dr. Halderman
7 testified and gave a video demonstration to this Court showing
8 that he was able to hack Georgia's BMD equipment?

9 **A.** I'm aware that there was a hearing and there was something
10 provided. I don't know that I could have told you what
11 happened. I know there have been -- over the years, there have
12 been many, many hearings.

13 I don't doubt that happened. I don't think I watched it,
14 but I think I was probably aware that it happened.

15 **Q.** You were elections director for the Secretary of State in
16 September of 2020; right?

17 **A.** Yes, ma'am.

18 **Q.** But while you were in -- at that time you were in that
19 position, no one informed you that Dr. Halderman was able to
20 hack the Fulton County BMD equipment that he had been lawfully
21 provided access to; isn't that right?

22 MR. TYSON: And I'll just object to the extent that
23 calls for attorney-client communications, Your Honor.

24 THE COURT: All right. Excluding what your attorney
25 may have told you in the process of the State's attorney in

1 connection with consulting you about the case, please answer
2 the question.

3 THE WITNESS: Yes, ma'am. My understanding was that
4 pursuant to the order of the Court, Dr. Halderman had been
5 given a complete BMD system with all the guidebooks and
6 passwords and architecture and stuff that goes with it to
7 examine for the Court to report back to the Court about what he
8 was or wasn't able to do with it.

9 So I was aware that that was happening, and my
10 understanding was essentially that that was his report to the
11 Court.

12 So again, that is the extent I was aware of what had
13 happened.

14 BY MS. KAISER:

15 Q. Do you recall testifying -- do you recall giving a
16 deposition in this case, Mr. Harvey?

17 A. I do.

18 Q. And do you recall being under oath in that deposition?

19 A. I do.

20 Q. Would it help you -- would it refresh your recollection on
21 this topic to take a look at your deposition?

22 A. It might, yes, ma'am.

23 Q. Mr. Harvey, I'm just going to just ask that we put this up
24 on the screen and read it out loud to you if that's all right
25 with you.

1 **A.** Yes, ma'am.

2 **Q.** I'm on page --

3 THE COURT: It should be in front of you.

4 MR. TYSON: I'm sorry, Your Honor. We're putting
5 Mr. Harvey's deposition on the screen for him to read out loud?

6 I misunderstood --

7 MS. KAISER: I'm going to read from his deposition.

8 MR. TYSON: Your Honor, if we're trying to impeach
9 Mr. Harvey, I think that is one thing. I think he can review
10 his deposition. I don't think Ms. Kaiser can read his
11 testimony.

12 THE COURT: I think you have to let him review it
13 first.

14 MS. KAISER: Okay.

15 THE COURT: Harry, it is not on his screen.

16 MS. KAISER: It's Page 76, starting at Line 21.

17 THE COURT: Did you give it to him?

18 MS. KAISER: He's pulling it up right now. I
19 apologize, Your Honor. He is pulling it up right now.

20 THE COURT: Don't put it up on the main screen,
21 though, until he has an opportunity to review it. Then you can
22 examine it.

23 COURTROOM DEPUTY CLERK: Put in on the screen?

24 THE COURT: The screen in front of the witness.

25 COURTROOM DEPUTY CLERK: But if I put it up, it won't

1 show --

2 THE COURT: I don't know what you --

3 COURTROOM DEPUTY CLERK: Go ahead and put it up now.

4 THE WITNESS: It was just on my screen for a second,
5 and then it went away.

6 MR. TYSON: Your Honor, it appears to be on all of
7 our screens.

8 THE COURT: Right, but not on the public screens.

9 MR. TYSON: Thank you.

10 THE WITNESS: It is on my screen.

11 What lines were you referring to?

12 BY MS. KAISER:

13 Q. If you could please read starting at Page 76, Line 21
14 through Page 77, Line 19.

15 A. Okay. Just to myself?

16 Q. Yes. Thank you.

17 A. Do I advance it here?

18 To the bottom to 19?

19 Q. Yes.

20 A. Yes, ma'am, I've read that.

21 Q. Does that refresh your recollection about your knowledge
22 of Dr. Halderman's report at the time that you were elections
23 director for the Secretary of State?

24 A. I don't know if I learned that after the deposition or
25 not. I knew that at some point Dr. Halderman had been given

1 access to a BMD and all that stuff and that he had -- there was
2 a report, and I think his report was made public right after I
3 left the Secretary of State's office, but it had been made
4 available to certain people before that.

5 So I was aware of kind of the circumstances that were
6 going on, so -- but I don't know that -- you know, in the
7 deposition, I'm not sure I was aware that that was going on. I
8 may have learned that since then.

9 **Q.** Okay. And I just want to make clear, I'm not asking you
10 about Dr. Halderman's July 2021 report. I'm asking you about a
11 demonstration that he gave to this Court in September of 2020.

12 Does that change your answer?

13 **A.** Okay. Then I think -- I think that answer is correct. I
14 think I was referencing the report that came out right after I
15 left the Secretary of State's office.

16 No, I don't think I'm aware of the 2020 demonstration to
17 the Court. I thought that was all the same thing.

18 **Q.** Okay. So regarding the 2020 demonstration to the Court,
19 no one informed you that Dr. Halderman was able to hack the
20 Fulton County BMD equipment such that it would produce QR codes
21 that did not match the selections on the BMD; correct?

22 **MR. TYSON:** And, Your Honor, I'll object that that
23 assumes facts not in evidence related to the hack. I
24 believe -- I can't remember if that portion -- it may be
25 unsealed now, but the hack was not of the BMD itself, it was of

1 another component of the system.

2 MS. KAISER: It was the BMD equipment.

3 MR. TYSON: It was of the printer.

4 MR. CROSS: Who is testifying?

5 BY MS. KAISER:

6 Q. Would you like me to ask the question again?

7 A. Yes, ma'am.

8 Q. While you were elections director, no one informed you
9 that Dr. Halderman was able to hack the Fulton County BMD
10 equipment such that it would produce QR codes that did not
11 match the selections on the BMD; is that correct?

12 A. I think that is correct.

13 MR. TYSON: I'll object that it assumes facts not in
14 evidence.

15 BY MS. KAISER:

16 Q. That was correct?

17 A. I believe so, yes, ma'am.

18 Q. And that is something that you would want to know about as
19 the elections director; right?

20 A. Yes, ma'am.

21 Q. And as of your July -- January 2022 deposition, you were
22 not aware of any measures taken by the Secretary's office or
23 any county to remediate the vulnerabilities identified by
24 Dr. Halderman in his September 2020 demonstration; right?

25 A. I don't believe so, no.

1 **Q.** If it had been demonstrated that on any BMD anywhere
2 across the state a voter could walk in, plug in a USB device,
3 upload malware, and walk out while they were purporting to
4 vote, that would give you concern; right?

5 MR. TYSON: Objection, Your Honor. That calls for
6 speculation by a lay witness.

7 MS. KAISER: I'm asking him his view, Your Honor.

8 THE COURT: You're asking him his what?

9 MS. KAISER: His view as the elections director of
10 the Secretary of State.

11 THE COURT: Given the length of his experience, I
12 mean, it is -- it is not expert testimony, but it is not just a
13 lay witness either, given the range of his experience.

14 You may answer.

15 THE WITNESS: So could you repeat the question,
16 please.

17 BY MS. KAISER:

18 **Q.** Yes. If it had been demonstrated that on any BMD anywhere
19 across the state a voter could walk in, plug in a USB device,
20 upload malware to the BMD, and walk out while they were
21 purporting to vote, that would give you concern; right?

22 **A.** It would give me concern. Although the entire security
23 system is designed to prevent that from happening. I mean,
24 that is where the security procedures, the physical security,
25 people at polling places are trained to detect and prevent that

1 stuff.

2 So it would give me concern, but frankly, that was -- you
3 know, that was always a concern for security of the machines,
4 both with the DREs and the BMDs, is that they -- the poll
5 workers be attentive to anybody trying to manipulate them or do
6 anything to them.

7 But to answer your question, it would give me concern, but
8 I also knew that there were some safeguards and procedures in
9 place to prevent or deter that.

10 **Q.** If that had been -- if it had been demonstrated that a
11 voter could walk in, plug in a USB device, and upload malware
12 to a BMD, you would expect measures to be taken to mitigate or
13 eliminate that vulnerability, would you not?

14 **MR. TYSON:** Objection. Same speculation. Objection,
15 Your Honor.

16 **THE COURT:** I'm going to sustain the objection.

17 **MS. KAISER:** I don't have any further questions at
18 this time, Your Honor. Thank you.

19 **MR. TYSON:** And, Your Honor, we would note your
20 ruling. But just for the purposes of the record, we would
21 lodge an objection under the local rule for additional
22 examination of Mr. Harvey by a lawyer on the same side.

23 **THE COURT:** All right. So noted.

24 **CROSS-EXAMINATION**

25

1 BY MR. BROWN:

2 **Q.** Good afternoon, Mr. Harvey. My name is Bruce Brown. I
3 represent the Coalition plaintiffs.

4 **A.** Good afternoon, sir.

5 **Q.** I would like to hand to you Curling Plaintiffs'
6 Exhibit 406.

7 Mr. Harvey, is this a copy of your August 1, 2018, letter
8 to the county commissioners and officials?

9 **A.** Yes, sir, it appears to be.

10 MR. BROWN: Move to admit, Your Honor.

11 MR. TYSON: No objection.

12 THE COURT: It is admitted.

13 This exhibit number is 406 for the plaintiffs?

14 MR. BROWN: It is 406. Yes, Your Honor.

15 THE COURT: Okay.

16 BY MR. BROWN:

17 **Q.** Mr. Harvey, do you recall the occasion, the reason, or
18 what prompted you to write this letter to the county
19 commissioners and officials?

20 **A.** Can I take a minute to read it?

21 **Q.** Of course, yes, sir.

22 **A.** Thank you.

23 All right, sir.

24 **Q.** Thank you.

25 I would -- what was the -- what prompted you to write this

1 letter?

2 **A.** I think it was -- I think it was two things. I think
3 there had been some concern among some counties that they were
4 going to use hand-marked paper ballots sort of on their own;
5 and secondly, to announce the formation of the SAFE Commission
6 and the process to look at the next voting system.

7 **Q.** And one of the things that you say in this letter, the
8 effect of it is, if there is going to be a move to hand-marked
9 paper ballots, that is for the State to decide.

10 Is that the gist of it?

11 **A.** I think it is --

12 MR. TYSON: Object, Your Honor. I don't believe that
13 is what the letter says. I don't know that it references
14 hand-marked paper ballots.

15 THE COURT: Why don't you reference what you are
16 talking about?

17 BY MR. BROWN:

18 **Q.** Sure. Let me direct your attention to the last paragraph
19 on Page 2, and I'll just read it into the record.

20 Quote, There is a provision of Georgia law that allows the
21 State to move to paper ballots in the event that the machines
22 are inoperable or unsafe. If we ever reach a point where our
23 office feels that these machines cannot be trusted to
24 accurately deliver election results, we will invoke the
25 statutory authority.

1 THE COURT: Statutory provision.

2 BY MR. BROWN:

3 Q. Statutory provision. To this day, there is no credible
4 evidence that our election process is anything except secure
5 and accurate.

6 Do you see that?

7 A. I do.

8 Q. And those are your words; correct?

9 A. Correct.

10 Q. And you thought that was a correct statement at the time;
11 correct?

12 A. I did. I would point out that I wrote this in conjunction
13 with counsel.

14 Q. Okay. Good.

15 Is it fair to say then that if there were credible
16 evidence that Georgia's election process was not secure or
17 accurate, the State could invoke the statutory authority and
18 move to paper ballots?

19 MR. TYSON: Objection. Calls for a legal conclusion.

20 THE COURT: I think that is true. I sustain the
21 objection.

22 You can -- he can testify based on his experience and
23 knowledge, but not based on his legal --

24 BY MR. BROWN:

25 Q. Putting aside the law -- I'm not asking for your legal

1 authority. I'm asking for your understanding as the director
2 of elections.

3 In the same capacity that you wrote this letter, is it
4 your understanding that if there were evidence that Georgia's
5 election system was not secure and not accurate that it would
6 be appropriate for the Secretary of State to move to paper
7 ballots?

8 **A.** I think -- yes, I think if the -- if there had been a
9 determination made through some process, then the law is what
10 it is. That's why I cited the inoperable or unsafe.

11 But that was my understanding is that further steps could
12 be taken if that point was reached.

13 **Q.** Now, let's change topics.

14 As the director of elections, you were aware that
15 municipalities would conduct their own elections in many
16 instances apart from the counties in which they were relocated;
17 correct?

18 **A.** That's correct.

19 **Q.** And the municipalities, is it your understanding the
20 municipalities must use BMDs, or do they have the option to use
21 BMDs or paper ballots?

22 **A.** Are you talking about in 2018 or now?

23 **Q.** I'm sorry. Today or within your tenure.

24 **A.** It has been a while. My best recollection is that
25 municipalities can use paper ballots, hand-marked paper ballots

1 for municipalities. If that law has changed, I may be wrong,
2 but I haven't really confronted that lately.

3 **Q.** Do you know or can you confirm that many of the large
4 towns or cities like Snellville, Duluth, Peachtree Corners,
5 Suwanee have used paper ballots?

6 **A.** I can't -- I know that some cities do. Those ones you
7 listed, I just don't know whether or not they do. But I'm
8 aware that -- my understanding is it is usually the smaller
9 cities that use hand-marked paper ballots, but I just don't
10 know about those cities you listed.

11 **Q.** Do you know how the municipalities -- open-ended question.
12 Do you know how the municipalities get the gear to put on
13 an election, the BMDs, the servers, the scanners?

14 **A.** They usually get it from the counties. I think there were
15 some cities that were actually purchasing their own. I'm not
16 positive about that. I think they had made some inquiries
17 about purchasing their own electronic equipment. But my
18 experience was that in most cases, they would get the equipment
19 from the county in which they resided.

20 **Q.** And so the municipalities themselves would be responsible
21 for physical security of the BMDs and the other electronic
22 equipment after getting it from the counties?

23 **A.** If they ran the elections themselves. Now, a lot of
24 times, cities would basically contract how the counties do it.
25 It was still the -- whoever the election superintendent

1 ultimately had the authority. If they had contracted with a
2 county, there would be county people there physically doing it,
3 but the city would still have, I think, the legal authority to
4 maintain the security.

5 But whoever is conducting the election, I think, would
6 have the responsibility to maintain the security of the
7 equipment.

8 **Q.** And your understanding is sometimes it is the city that is
9 doing it for itself; correct?

10 **A.** That is correct. Although I don't know if any city uses
11 BMDs by themselves. I mean, that is -- the BMDs, you know,
12 came onto the scene, and I left in May of 2021. I don't know
13 whether they are in municipal elections, so I don't know if
14 that has happened. I think it is possible for a city to do
15 that.

16 MR. BROWN: Okay. I don't have any further
17 questions. Thank you, Mr. Harvey.

18 THE COURT: Are there any other questions?

19 MR. TYSON: We don't have any questions at this time,
20 Your Honor. Mr. Harvey is on our list to be re-called in our
21 case.

22 THE COURT: So you think he will be re-called?

23 MR. TYSON: I think it is likely he will be
24 re-called.

25 EXAMINATION

1 BY THE COURT:

2 Q. Just in the event he's not, I have just a very short
3 number of questions, which are just: You were director of
4 elections, and that is until you retired in May of '21 from the
5 department?

6 A. Yes, ma'am. Technically, it was the last day of June in
7 '21.

8 Q. And tell me the difference between the scope of the
9 responsibility of your office versus Mr. Barnes' office where
10 he ran the center -- or runs the Center for Elections.

11 A. I understand it has been reorganized a little bit since I
12 left. But at the time I was there, he was a separate division
13 So the Center for Election Systems was a separate division, so
14 I didn't have any supervisory authority over Mr. Barnes, but we
15 worked very closely together.

16 The easiest way to break it down is if it had anything to
17 do with a machine, whether an ExpressPoll or a BMD or a
18 scanner, it was Michael Barnes' issue. If it had something to
19 do with legality, procedure, forms, process, it was generally
20 on the Elections Division to deal with that.

21 We had liaisons that dealt directly with the counties.
22 The county would call their designated liaisons, and if it
23 turned out that the problem was with an ExpressPoll or a
24 scanner, we would generally connect them with Michael Barnes.

25 Now, Michael Barnes' team built the ballots, they got

1 machines and the software ready to run the election, but then
2 on election day in the aftermath of the election, all of that
3 stuff was generally done on our side.

4 **Q.** And from your perspective -- and I realize you did leave a
5 number of years ago, but you were a veteran.

6 What was then -- what was the interface between the chief
7 information officer and his responsibility for security in the
8 system versus Mr. Barnes?

9 **A.** Merritt Beaver was the, I guess, chief information
10 officer. Broadly speaking, he was much more concerned with
11 exterior and interior network stuff. So in terms of hacking,
12 protecting the voter registration system, those kinds of
13 things.

14 He had -- my understanding and recollection is that he had
15 very little to do with the actual machines. He had almost
16 everything to do with the network that the Secretary of State
17 operated on, the voter registration system operated on, that
18 kind of stuff.

19 THE COURT: Any questions because of mine?

20 MR. BROWN: Not from me, Your Honor.

21 MR. TYSON: Not for the State, Your Honor.

22 MS. KAISER: No further questions, Your Honor.

23 THE COURT: Thank you very much.

24 THE WITNESS: Thank you, ma'am.

25 THE COURT: Sorry to have to call you on this day. I

1 hope that the meeting went all right.

2 THE WITNESS: I appreciate your indulgence.

3 MS. KAISER: Your Honor, I would just like to clarify
4 one thing. I don't believe that Mr. Harvey is actually on
5 defendants' witness list as either a will call or a may call.

6 THE COURT: All right. Don't leave, Mr. Harvey, just
7 in case that is so because then I don't want to have to --

8 MR. TYSON: Your Honor, my recollection is anybody on
9 the plaintiffs' list was on our may call list at the end there.
10 So, I mean, I'll double-check that, but --

11 THE COURT: You double-check it.

12 MR. TYSON: Your Honor, Mr. Harvey is on our list.
13 It looks likes the pretrial order 1728 at Page 51, Mr. Harvey
14 is listed as a may call witness.

15 THE COURT: Okay.

16 MS. KAISER: I believe you guys sent us a revised
17 witness list on -- what was the date -- December 19th, and
18 Mr. Harvey was not listed as a witness on the revised witness
19 list.

20 MR. TYSON: If we're going to rely on that, Your
21 Honor, we have any witness identified by the plaintiff as a may
22 call as a catchall on there. I mean, we'll check on that, but
23 I think that either one would cover Mr. Harvey's testimony
24 during our case.

25 THE COURT: That's fine. You'll be allowed to

1 still -- to examine him within the scope of their examination
2 as long as it is not too redundant.

3 MS. KAISER: Thank you, Your Honor.

4 MR. CROSS: Could we get clarification now, Your
5 Honor, if there are any other witnesses they are anticipating
6 calling?

7 THE COURT: I'm going to let -- can I let Mr. Harvey
8 leave? He has had a rugged day.

9 MR. CROSS: Yes.

10 THE WITNESS: Thank you, ma'am.

11 MR. CROSS: Sorry, Mr. Harvey.

12 MS. KAISER: Thank you, Mr. Harvey.

13 MR. CROSS: Just for planning purposes --

14 MR. TYSON: Your Honor, Mr. Pico-Prats is checking on
15 that now, so if we could just have a moment to do that.

16 THE COURT: Sure. Who is the next witness? And then
17 we can take a break while he is looking.

18 MR. CROSS: Sara Ghazal. She's going to be on by
19 Zoom, but it's very short.

20 THE COURT: We need a break anyway to get all the
21 Zoom stuff, so you-all figure that out, and right before we do
22 the Zoom, we'll take care of it.

23 COURTROOM SECURITY OFFICER: All rise.

24 **(A brief break was taken at 3:21 PM.)**

25 THE COURT: I hear we have imperfect Zoom, but we'll

1 deal with it.

2 You can call your next witness.

3 MR. SCHEINMAN: Thank you, Your Honor. The
4 plaintiffs call Sara Ghazal.

5 COURTROOM DEPUTY CLERK: Ms. Ghazal, if you would
6 please raise your hand.

7 **(Witness sworn)**

8 COURTROOM DEPUTY CLERK: If you would, please state
9 your name and spell your full name for the record.

10 THE WITNESS: My name is Sara Tindall Ghazal.
11 S-A-R-A. Tindall, T-I-N-D-A-L-L. Ghazal, G-H-A-Z-A-L.

12 THE COURT: One second. We're going to try to adjust
13 the sound again.

14 COURTROOM DEPUTY CLERK: Let's try that.

15 Would you say something, Ms. Ghazal?

16 THE WITNESS: Is there still a delay?

17 THE COURT: Not as bad.

18 THE COURT REPORTER: Respell your middle name.

19 THE WITNESS: Tindall, T-I-N, as in Nancy, D-A-L-L.

20 Whereupon,

21 SARA TINDALL GHAZAL,

22 after having been first duly sworn, testified as follows:

23 CROSS-EXAMINATION

24 BY MR. SCHEINMAN:

25 Q. Good afternoon, Ms. Ghazal. Apologies for mispronouncing

1 your name earlier, and thank you for joining us.

2 First question, you joined the State Election Board in
3 June of 2021; is that correct?

4 **A.** Yes.

5 **Q.** I would like to show you something that has been marked
6 PX 577.

7 Do you see the document?

8 THE COURT: Does the witness have this also, this
9 exhibit?

10 MR. SCHEINMAN: In hard copy, Your Honor?

11 THE COURT: Yes.

12 MR. SCHEINMAN: No. This is just --

13 THE COURT: Are you able to see it on your screen, or
14 is it tiny?

15 THE WITNESS: It is tiny, but I think it is the
16 website for the State Election Board. Yes. And I can zoom in.

17 That is correct. Yes, I see it.

18 MR. SCHEINMAN: Thank you.

19 Your Honor, I would move to admit this into evidence,
20 please.

21 THE COURT: Is there any objection?

22 MR. PICO-PRATS: No objection, Your Honor.

23 THE COURT: It is admitted.

24 COURTROOM DEPUTY CLERK: State the number again,
25 please.

1 MR. SCHEINMAN: 577.

2 THE COURT: Why don't you proceed and have somebody
3 else find the copies. Okay?

4 MR. SCHEINMAN: Thank you.

5 BY MR. SCHEINMAN:

6 Q. Ms. Ghazal, the State Election Board is entrusted with a
7 variety of responsibilities and authority to protect the right
8 to vote in Georgia; right?

9 A. Correct.

10 Q. Your job at the SEB is to make sure Georgia can conduct
11 fair, legal, and orderly elections; right?

12 A. That's my understanding.

13 Q. And the way you do that through certain responsibilities,
14 that includes promulgation rules and regulations to promote
15 uniformity in election practices?

16 A. Yes.

17 Q. You investigate the administration of elections; right?

18 A. We have investigators that conduct the investigations, and
19 I review investigation reports.

20 Q. You also make recommendations to the General Assembly;
21 correct?

22 A. As a board, yes.

23 Q. And the SEB is also responsible for educating the public
24 about voting and offering voting education programs; right?

25 A. Subject to the allocation of funding from the General

1 Assembly, yes.

2 Q. So in order to discharge those responsibilities, you need
3 to be aware of any problems with the voting system; right?

4 A. Broadly, yes.

5 Q. You need to be aware of any vulnerabilities in the voting
6 system if they were discovered; correct?

7 A. Yes.

8 Q. Now, the SEB was not your first position related to
9 election policy; is that right?

10 A. That's correct.

11 Q. Before joining the SEB, you were the voter protection
12 director for the Democratic party of Georgia; is that right?

13 A. That is correct.

14 Q. And in that role, you, among other duties, supported the
15 Democratic caucus at the State House when it came to
16 legislation related to elections; is that right?

17 A. That's correct.

18 Q. And prior to that, you worked for the Carter Center
19 observing elections overseas; is that correct?

20 A. Yes.

21 Q. Ms. Ghazal, do you have a Twitter account?

22 A. I do.

23 Q. Do you Tweet under the handle @TindallSara?

24 A. Yes.

25 MR. SCHEINMAN: I would ask to show the exhibit that

1 has been marked PX 578.

2 THE COURT: What is it?

3 BY MR. SCHEINMAN:

4 Q. Ms. Ghazal, can you see it on the screen in front of you?

5 THE COURT: How are you getting this in at this
6 point?

7 MR. PICO-PRATS: Your Honor, just objection on
8 relevance. This is irrelevant material.

9 MR. SCHEINMAN: It is relevant.

10 MR. PICO-PRATS: It was before she was on the board,
11 and she is appearing before us as the member of the State
12 Election Board.

13 MR. SCHEINMAN: And as a member of the State Election
14 Board, she brings with her her prior history and perspectives.

15 THE COURT: Well, I think -- I'm not saying you can't
16 get it in, but I don't think this is the proper way of getting
17 it in. I think that you can ask her about her viewpoints. And
18 if she has something that has changed, that is another matter.

19 But to have her to introduce her Tweets as a -- as
20 the substantive evidence first before asking her anything seems
21 to be, I mean, a peculiar way of proceeding, and I'm not going
22 to allow it right now.

23 MR. SCHEINMAN: Take that down for a moment then,
24 please.

25

1 BY MR. SCHEINMAN:

2 Q. Ms. Ghazal, do you recall that there was -- that the
3 future of Georgia's election system was subject to public
4 debate in 2019?

5 A. Yes.

6 Q. Do you recall participating in that debate?

7 A. Yes.

8 Q. Do you recall that as part of that debate there was some
9 who advanced an argument that because one part of the system,
10 the scanners, might be vulnerable in a new election system,
11 adding an additional second system that might be more
12 vulnerable wouldn't increase the total risk to the system?

13 A. I do recall based on what was just temporarily shown on my
14 screen.

15 Q. And did you also comment at that time in 2019 that you
16 could not understand that argument?

17 A. Apparently, I did because that is what appeared on my
18 screen.

19 Q. And shifting forward to today, though, as a matter of
20 policy, you still consider yourself a strong supporter of paper
21 ballots; is that right?

22 A. As a matter of policy, yes.

23 Q. Earlier this year, the SEB considered some petitions to
24 adopt a rule that would permit county election officials to use
25 backup paper ballots in the event of a serious security breach;

1 is that right?

2 **A.** Yes.

3 **Q.** But you believed the SEB does not have the authority to
4 adopt such a rule; is that right?

5 **A.** I believe that the State Election Board is not a
6 policymaking board. Our role is limited to what the statute
7 has defined for us, which is creating rules and regulations
8 within the boundaries of the laws that are passed by the
9 Georgia General Assembly.

10 **Q.** And so is it your understanding at present that the only
11 time a county may shift away from the BMD system for in-person
12 voting is when it is physically impossible or impractical,
13 meaning it, like, physically cannot be done?

14 **A.** I believe that the statute defines the circumstances as
15 impracticability.

16 **Q.** And so does that mean that essentially so long as the
17 machines can be powered on, they will be used?

18 **A.** I do not believe that, no.

19 **Q.** And how is it that you came to that understanding?

20 **A.** My understanding of impracticability means that it cannot
21 be done in a way that is practical and safe based on the
22 statute and application of it.

23 **Q.** Is that also based on analysis provided to you by the
24 Secretary of State?

25 **A.** I do not recall. Perhaps. But I do know that at the

1 election board meeting at which we were considering this rule,
2 there was a presentation from the Secretary of State.

3 **Q.** Thank you.

4 Turning your attention now back to November of 2021, at
5 that time, you had been a member of the State Election Board
6 for about five months; is that right?

7 **A.** Yes.

8 **Q.** You knew of plaintiffs' expert Dr. Halderman at that time;
9 correct?

10 **A.** Correct.

11 **Q.** You were aware at that time that he had provided a report
12 in this case regarding security vulnerabilities within the BMD
13 system that is used in Georgia; is that right?

14 **A.** Yes. That's correct.

15 **Q.** As of November 2021, you had not read Dr. Halderman's
16 report; is that correct?

17 **A.** Correct.

18 **Q.** And were you aware at that time that Dr. Halderman's
19 report was designated attorneys' eyes only at the request of
20 your attorneys?

21 **A.** Yes, I was aware.

22 **Q.** And were you aware that in 2021, plaintiffs asked the
23 Secretary of State's counsel to provide a proposal that would
24 allow for the SEB, including yourself, to be able to access
25 some or all of Dr. Halderman's report?

1 **A.** I was aware, yes.

2 **Q.** Did you ask anyone to see that report?

3 **A.** I don't recall. That was a couple of years ago. I have
4 since seen the report.

5 MR. SCHEINMAN: Thank you. I have nothing further.

6 MR. PICO-PRATS: No questions from us, Your Honor.

7 THE COURT: All right. Any other questions?

8 MR. BROWN: No, Your Honor.

9 THE COURT: Can we excuse this witness?

10 MR. SCHEINMAN: Yes.

11 MR. PICO-PRATS: We can excuse her.

12 THE COURT: Thank you very much for appearing.

13 THE WITNESS: Your Honor, if I may thank you for
14 allowing me to appear remotely. That was not ideal
15 circumstances, so I appreciate it.

16 THE COURT: Well, it would have been unfortunate to
17 drag you here for that short of a time. Good luck.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Who is the next witness?

20 MR. CAMPBELL: Rebecca Sullivan, Your Honor.

21 THE COURT: Come through the middle. We have
22 overflow.

23 THE WITNESS: Good afternoon.

24 COURTROOM DEPUTY CLERK: Would you please stand and
25 raise your right hand.

1 **(Witness sworn)**

2 COURTROOM DEPUTY CLERK: Thank you.

3 Please have a seat. If you would state, your name
4 and spell your complete name for the record.

5 THE WITNESS: My name is Rebecca Sullivan,
6 R-E-B-E-C-C-A, S-U-L-L-I-V-A-N.

7 Whereupon,

8 REBECCA SULLIVAN,

9 after having been first duly sworn, testified as follows:

10 CROSS-EXAMINATION

11 BY MR. CAMPBELL:

12 **Q.** Good afternoon, Ms. Sullivan.

13 **A.** Good afternoon.

14 **Q.** How are you today?

15 **A.** Good. How are you?

16 **Q.** Good.

17 So, Ms. Sullivan, you joined the State Election Board in
18 2013; is that correct?

19 **A.** Correct.

20 **Q.** And for my purposes today, if I refer to the State
21 Election Board as the SEB, would that be okay with you?

22 **A.** Of course.

23 **Q.** Thank you.

24 And the SEB is responsible for passing rules and
25 regulations regarding the conduct of elections; is that right?

1 **A.** That's correct.

2 **Q.** And these rules and regulations are designed to ensure
3 that elections are fair and uniform?

4 **A.** Correct.

5 **Q.** And the SEB also hears alleged violations of election laws
6 and rules; is that right?

7 **A.** That's correct.

8 **Q.** And the SEB determines if there is probable cause that a
9 violation has occurred?

10 **A.** That's correct.

11 **Q.** And, Ms. Sullivan, am I right that you are no longer an
12 SEB member?

13 **A.** That's correct.

14 **Q.** And you left in 2022?

15 **A.** Yes. January of 2022.

16 **Q.** Ms. Sullivan, it is important to have security controls in
17 place regarding an election system; correct?

18 **A.** Yes.

19 **Q.** And, Ms. Sullivan, when you were at the SEB, you would not
20 have supported an election system that could be hacked in a
21 matter of minutes by a voter in a voting booth; is that
22 correct?

23 **A.** As a member of the SEB, we promulgated rules and
24 regulations to implement the voting system that was procured by
25 the Secretary of State's office according to the law.

1 Q. So you would not support -- when you were at the SEB, you
2 would not support a voting system that could be hacked by a
3 voter?

4 A. At the SEB, we would promulgate rules to protect the
5 safety and security of elections and election systems.

6 Q. Yes. But when you were at the SEB office, you personally
7 would not have supported such a system that would allow a voter
8 to hack the system?

9 MR. BELINFANTE: Objection. Asked and answered.

10 THE COURT: Please go ahead and answer, and then
11 we'll move on after that.

12 THE WITNESS: We -- I would support the election
13 system that was safe and secure.

14 BY MR. CAMPBELL:

15 Q. Ms. Sullivan, you were a member of the SEB in November of
16 2021; correct?

17 A. Correct.

18 Q. And at that point you had been at the SEB for roughly
19 eight years?

20 A. Yes.

21 Q. And as of November 2021, you knew of plaintiffs' expert
22 Dr. Halderman?

23 A. I believe I'm familiar with that name, yes.

24 Q. And you are aware that Dr. Halderman had issued a report
25 about his examination of Georgia's voting equipment?

1 **A.** I'm familiar with the -- that there is a Halderman report;
2 correct.

3 **Q.** But as of November 2021, you had not read Dr. Halderman's
4 report; is that correct?

5 **A.** I had not read that report. I'm not sure that it was
6 available.

7 **Q.** Are you aware that the State insisted on treating the
8 Halderman report as attorneys' eyes only?

9 **A.** I am not -- I'm not familiar with the position that the
10 State's attorneys took, no.

11 **Q.** Are you aware that the plaintiffs wanted the SEB members
12 to review the report?

13 **A.** I'm not familiar with what the plaintiffs wanted.

14 **Q.** Did you ever ask to review the report?

15 **A.** I do not recall having asked to review the report.

16 **Q.** Ms. Sullivan, were you -- in November of 2021, were you
17 aware that Dr. Halderman demonstrated a hack in court in
18 September of 2020?

19 **A.** I don't recall that.

20 **Q.** And are you not aware that Dr. Halderman figured out how
21 to hack the system in only three days after he received the
22 equipment?

23 **A.** I'm not familiar with the Halderman report.

24 **Q.** As of 2000 -- as of November 2021, you were not familiar
25 with Dr. Halderman's work in general; correct?

1 **A.** I have not read the Halderman report, no.

2 MR. CAMPBELL: No further questions.

3 THE WITNESS: Thank you.

4 THE COURT: Wait a second.

5 **(There was a brief pause in the proceedings.)**

6 MR. CAMPBELL: No further questions, Ms. Sullivan.

7 Thank you.

8 THE WITNESS: Thank you.

9 MR. BROWN: No questions, Your Honor.

10 THE COURT: No questions? All right.

11 DIRECT EXAMINATION

12 BY MR. BELINFANTE:

13 **Q.** Good afternoon, Ms. Sullivan.

14 **A.** Good afternoon.

15 **Q.** Plaintiffs didn't ask you, so could you please tell the
16 Judge what your current role is with the State of Georgia and
17 what you did professionally before you were appointed to your
18 current position.

19 **A.** Yes. I serve as the Commissioner of the Georgia
20 Department of Administrative Services. I've been in that role
21 for two years. And prior to that, I served as the general
22 counsel and assistant commissioner to that agency. I also
23 worked in Governor Perdue's administration as policy advisor
24 and counsel and have spent some time in private practice as
25 well.

1 Q. And what is your educational background?

2 A. I have a degree in political science and a juris doctor
3 from the University of Georgia.

4 Q. Who appointed you to the State Election Board?

5 A. I was appointed by then the late speaker David Ralston.

6 Q. And I know you were asked this earlier, but that was in
7 2013; is that right?

8 A. Yes.

9 Q. And did you have any titles while you served on the State
10 Election Board?

11 A. For -- I served as a vice chairman for a number of years,
12 and then -- that is the only title that I had formally.
13 Although I served as chair after Secretary Raffensperger
14 stepped down as chair.

15 Q. Did you want to be appointed to the State Election Board?

16 A. I did.

17 Q. Why?

18 A. I thought that -- I have been raised to believe in the
19 value of public service, and I thought that this would be a
20 good opportunity for me to contribute in a meaningful way to
21 our state.

22 Q. What would you do to prepare for State Election Board
23 meetings?

24 A. I would read the investigative summaries and investigative
25 reports that were prepared by the Secretary of State's office

1 and research any case law or regulations and rules that were
2 cited as potential violations.

3 **Q.** And you said things were prepared by the Secretary of
4 State's office.

5 Did the State Election Board, during your time, have an
6 independent staff?

7 **A.** They did not.

8 **Q.** And so who served as the staff of the State Election
9 Board?

10 **A.** The staff of the Secretary of State's office.

11 **Q.** How long would it take you to prepare for a State Election
12 Board meeting, typically?

13 **A.** It would generally depend on the length of the agenda for
14 the meeting and the number of cases that were heard, but it
15 was -- it could be a very significant investment of time to
16 prepare for one of those of meetings adequately.

17 **Q.** Did you take your job seriously on the State Election
18 Board?

19 **A.** Absolutely.

20 **Q.** Did you conduct yourself in good faith?

21 **A.** Yes.

22 **Q.** And in your time on the State Election Board, do you have
23 any reason to doubt that other members of the commission
24 conducted their professional duties in good faith?

25 **A.** I do not.

1 Q. Ms. Sullivan, let's back go to 2020 if we can.

2 To your recollection, did COVID impact elections in
3 Georgia in 2020?

4 A. Yes.

5 MR. CAMPBELL: Objection. This is beyond the scope
6 of my testimony, Your Honor.

7 MR. BELINFANTE: You testified?

8 THE COURT: Your examination?

9 MR. CAMPBELL: My examination.

10 THE COURT: If you want to have her talk about that,
11 you can call her, or if it is very short, I'm going to allow
12 you to do it now.

13 MR. BELINFANTE: It truly is very short, and I'm
14 trying not to call her back in our main.

15 THE COURT: That's fine. You'll just get an
16 opportunity then to examine --

17 MR. BELINFANTE: Yeah, and if I need to link it, Your
18 Honor, I would say that they were asking questions about, you
19 know, her knowledge of Dr. Halderman in 2011 -- or 2021, so I
20 think I'm setting context for that, if I could.

21 THE COURT: All right.

22 BY MR. BELINFANTE:

23 Q. Let me ask again, Commissioner Sullivan.

24 In 2020, did the COVID pandemic impact elections in
25 Georgia?

1 **A.** It certainly did.

2 **Q.** And did that -- did the State Election Board then respond
3 to the COVID pandemic?

4 **A.** Yes. The State Election Board was very involved in making
5 sure that citizens were available to vote and feel safe in
6 doing so.

7 **Q.** Do you recall any of the specific actions or rules taken
8 by the State Election Board in response to the COVID pandemic?

9 **A.** I do believe that the ballot drop box rule related to
10 COVID.

11 **Q.** And the ballot drop box rule, is that --

12 THE COURT: All right. Now, I mean, this is not
13 where I thought you were going, so I'm not sure of -- I mean,
14 other than saying that we were very concerned about access,
15 which I understood, but if we start going into the ballot drop
16 box, that is a whole other scope of matters.

17 MR. BELINFANTE: All right.

18 BY MR. BELINFANTE:

19 **Q.** You were asked about your belief in the importance of
20 safety and integrity of Georgia elections.

21 Do you recall that?

22 **A.** Yes.

23 **Q.** As a member of the State Election Board, did you often
24 hear complaints from individuals who questioned the integrity
25 and safety of Georgia elections?

1 **A.** We did.

2 **Q.** Were those questions limited to the use of the Dominion
3 BMD ballot-marking devices?

4 **A.** They were not.

5 **Q.** Did you hear complaints about other means of voting?

6 **A.** Yes.

7 **Q.** Like what?

8 **A.** Like absentee ballots from drop boxes.

9 **Q.** Are absentee ballots in Georgia hand-marked paper ballots?

10 **A.** They are.

11 **Q.** Do you agree that -- with the statement that any -- or
12 excuse me, that no election is flawless?

13 **A.** Yes, I do.

14 **Q.** In your time on the State Election Board, do you recall
15 hearing from a voter who came before the commission saying that
16 they cast their ballot on the BMD devices -- so we're talking
17 2020 elections forward -- and the machine did not count their
18 vote as cast?

19 **A.** I do not.

20 MR. CAMPBELL: Objection. Leading.

21 MR. BELINFANTE: I asked if she recalled that
22 happening. It is not suggesting an answer.

23 THE COURT: It is allowed. Proceed.

24 MR. BELINFANTE: I asked if it happened or not.

25 THE COURT: Come on. Go ahead.

1 MR. CROSS: He did say he was testifying a second
2 ago.

3 MR. BELINFANTE: After your --

4 THE COURT: Everyone is testifying, apparently.

5 MR. BELINFANTE: All right. Let me ask this.
6 I'll --

7 BY MR. BELINFANTE:

8 Q. Do you recall, Commissioner Sullivan, anyone coming before
9 the State Election Board complaining about their vote not being
10 cast as counted on a Dominion BMD machine?

11 A. I do not believe I recall any specific complaint.

12 Q. Okay. Are you proud of your time on the State Election
13 Board?

14 A. I am.

15 Q. Why?

16 A. I was raised to believe in the value of public service,
17 and I have served on a number of public service roles over my
18 career, none more important than serving on the State Election
19 Board and our work to ensure fair and free elections.

20 In December of 2020, my daughter turned 18, and I will
21 never forget, she was not allowed to vote -- she was not
22 eligible to vote in the general, but I will never forget being
23 proud to walk her to vote for her very first time and knowing
24 that I had a piece of that, ensuring that she was able to do
25 so.

1 Q. And what method did she vote?

2 A. A BMD.

3 MR. BELINFANTE: Thank you, Commissioner. No more
4 questions.

5 MR. CAMPBELL: Nothing further.

6 THE COURT: Does anyone else have anything further?

7 MR. BROWN: No, Your Honor.

8 THE COURT: All right. You may be excused. Thank
9 you very much.

10 MR. BELINFANTE: Your Honor, we do not intend to call
11 this witness back, so I presume we can instruct her in terms of
12 sequestration will continue until the ruling is over.

13 THE COURT: Is there any possibility that the
14 plaintiffs' counsel are going to need her?

15 MR. CROSS: Not for us.

16 MR. BELINFANTE: Thank you.

17 THE COURT: Who is your next witness?

18 MR. CROSS: Plaintiffs call Ryan Germany.

19 COURTROOM DEPUTY CLERK: Please raise your right
20 hand.

21 **(Witness sworn)**

22 COURTROOM DEPUTY CLERK: Please have a seat. If you
23 would, state your name and spell your complete name for the
24 record.

25 THE WITNESS: My name is Ryan Germany, R-Y-A-N,

1 Germany, like the country, G-E-R-M-A-N-Y.

2 Whereupon,

3 RYAN GERMANY,

4 after having been first duly sworn, testified as follows:

5 CROSS-EXAMINATION

6 BY MR. CROSS:

7 Q. Good afternoon, Mr. Germany.

8 A. Good afternoon.

9 MR. CROSS: Just one moment, Your Honor.

10 BY MR. CROSS:

11 Q. Why don't we start, and hopefully we'll get this fixed.

12 Mr. Germany, what is your current position?

13 A. I am a partner at the law firm of Gilbert Harrell
14 Sumerford & Martin.

15 Q. How long have you been there?

16 A. Since January -- about mid January 2023.

17 Q. Just what is the scope of your practice, generally?

18 A. I do election law. I do other government-type things.

19 Q. Is the state of Georgia a client?

20 A. No.

21 Q. Not of the firm at all?

22 A. I'm not sure of the firm at all. I don't -- I don't
23 believe so.

24 Q. What was your role immediately prior?

25 A. Prior, I was general counsel for the Georgia Secretary of

1 State.

2 **Q.** How long were you in that position?

3 **A.** I was in that position from January 2014 until mid
4 January 2023.

5 **Q.** So you have been gone from that role for about a year?

6 **A.** Yes, sir.

7 **Q.** Just generally as the general counsel in the Secretary of
8 State's office, how would you describe your responsibilities?

9 **A.** So my responsibilities were basically helping and advising
10 the office on all legal matters that came up, whether it was
11 working with our outside counsel on litigation, working with
12 contracts or procurements, working on HR matters, working on
13 just helping with different kind of implementation projects,
14 any kind of legal matter that would come up.

15 **Q.** What about litigation involving the Secretary's office?

16 **A.** Yes.

17 **Q.** As the general counsel for the Secretary of State's
18 office, did you have any legal duties that ran to the State
19 Election Board?

20 **A.** When I was -- for most of my tenure at the Secretary of
21 State's office, the Secretary of State was the chairperson of
22 the State Election Board. And so the Secretary of State staff
23 really, you know, assisted with what was essentially the staff
24 for the State Election Board as well.

25 So my duties regarding State Election Board would -- I

1 certainly helped with the drafting of rules and promulgation of
2 rule process and the administrative part of that, and then just
3 generally assisting with other duties as well.

4 **Q.** Was there a period of time while you were the general
5 counsel for the Secretary of State's office when you considered
6 the State Election Board a client or you considered yourself in
7 a privileged relationship?

8 **A.** I was in-house counsel for the Secretary of State, and due
9 to the Secretary of State's role as Chair of the State Election
10 Board, I would say I served in a similar role -- I wouldn't say
11 they had -- I wouldn't say it was their in-house counsel, but
12 they had outside counsel, and I was oftentimes kind of a
13 liaison type of person for both SOS and SEB.

14 **Q.** And fair to say that that ended when the chairman of the
15 SEB was no longer the Secretary of State?

16 **A.** Well, it was interesting because the Secretary of State
17 staff still, you know, was, under law, supposed to assist the
18 State Election Board. So I still assisted, you know, as
19 requested and as needed, but I'm not sure how -- it did seem
20 like it was somewhat of a different feel.

21 **Q.** You mentioned your responsibilities included contracts and
22 procurement.

23 Did you have responsibility for the Secretary of State's
24 office with respect to negotiating or executing the contract
25 with Dominion for the current voting system?

1 **A.** Yes, I assisted with that.

2 **Q.** Generally, how did you assist with that?

3 **A.** Well, it starts, obviously, with a -- a procurement, so
4 there's documents that are put together for that. I was not
5 involved directly in kind of drafting those documents, but I
6 feel like my role was working -- the way procurement works is
7 we work with an agency called -- we, meaning SOS, works with an
8 agency called DOAS, Department of Administrative Services, and
9 they run the procurement.

10 And so I was kind of a liaison for that just to try to
11 make sure we're following all the relevant laws and rules. And
12 then, of course, following the procurement, I worked with -- we
13 had some outside counsel to help with the contracts. So I
14 liaised with them and helped with that process and then
15 negotiated with Dominion's counsel as well in finalizing and
16 executing that contract.

17 **Q.** In your role negotiating with Dominion's counsel of the
18 contract, did you have input into what the ultimate contract
19 provisions were?

20 **A.** Yes.

21 **Q.** So you're familiar with that contract that was executed on
22 behalf of the State with Dominion?

23 **A.** Well, it is a long contract, but yes, generally.

24 **Q.** Can you recite provision -- okay. I won't do that to you.

25 THE COURT: Sing it too.

1 THE WITNESS: My cross from suits. I can't do that.
2 BY MR. CROSS:
3 **Q.** Mr. Germany, I asked you -- with respect to litigation,
4 you said that you also had a role on behalf of the Secretary's
5 office when the office was involved in litigation; is that
6 right, sir?
7 **A.** Yes, sir.
8 **Q.** And did that include this litigation?
9 **A.** Yes, sir.
10 **Q.** Again, just at a general level, what was your role on
11 behalf of the Secretary's office with respect to this
12 litigation?
13 **A.** So the State has -- Secretary of State has outside counsel
14 to represent the office in litigation, so my role is to work
15 with the outside counsel. A lot of times, I'm sort of the
16 relayer of SOS concerns to outside counsel and then outside
17 counsel concerns or information back, and then just kind of
18 play an educational role also, you know, without outside
19 counsel to make sure that they are aware of what we do at SOS,
20 and, you know, really just kind of try to facilitate that
21 relationship as well as possible.
22 **Q.** Did you have any role or responsibility with respect to
23 how the Secretary's office responded to discovery requests that
24 were served in this case?
25 **A.** I would certainly have input and review responses to

1 discovery requests.

2 **Q.** Did you have any role with respect to the Secretary's
3 office collecting or producing documents in the case?

4 **A.** Generally, there has been a lot of litigation, so I can't
5 say that I'm recalling exactly this litigation process,
6 especially given the age. But generally, my role in kind of
7 document collection process is working with our outside counsel
8 with the -- usually a third-party document manager, getting
9 them the appropriate access, getting the -- and having the
10 collection basically occur.

11 **Q.** Did you have any role in strategic decisions that were
12 made, just yes or no, with respect to this litigation?

13 **A.** I would say I would have some input.

14 **Q.** And did you have any role in keeping anyone in the
15 Secretary's office updated on developments in the litigation?

16 **A.** Yes.

17 **Q.** Again, just at a general level, what was your role with
18 respect to that?

19 **A.** So my role, again, was really generally relaying
20 information from outside counsel to appropriate people at the
21 Secretary of State's office, or sometimes I would even add, you
22 know, if there needed to be a, oh, hey, let's talk to -- it
23 might be myself and outside counsel talking to somebody if it
24 required, you know, a particular follow-up.

25 **Q.** So you said you had a role in conveying information

1 involving litigation to the appropriate people at the
2 Secretary's office.

3 Who made the decision at the Secretary's office who the
4 appropriate people were to receive any information about the
5 litigation at any given time?

6 **A.** That would generally be me. And then, of course, you
7 know, if I maybe had some question about it, I would ask
8 somebody for input depending on the situation.

9 **Q.** So let's take a concrete example.

10 Do you recall in July of 2021 that Dr. Halderman prepared
11 a lengthy report detailing a number of security vulnerabilities
12 with the BMD system that he received from Fulton County to
13 examine?

14 **A.** I recall the Halderman report. I don't recall the exact
15 time frame.

16 **Q.** Did you yourself read that report?

17 **A.** Yes.

18 **Q.** Do you recall when?

19 **A.** No.

20 **Q.** Do you recall whether it was at or around the time that it
21 was provided to the State?

22 **A.** My recollection was that I was allowed to see it but that
23 I was not allowed to share it with other people at SOS
24 depending on -- because of the way it was classified in the
25 court order, I guess, classifying certain documents.

1 Q. So again, my question was: Do you recall whether you read
2 it at or around the time that the State first received it, or
3 did you read it months later or years later?

4 MR. BEDARD: Objection just to vagueness as to the
5 State. I think if he can clarify the question, that will solve
6 my concern.

7 MR. CROSS: You. You guys. We provided it to the
8 lawyers in this case.

9 THE WITNESS: I don't think I can recall exactly. I
10 know I would have received it, I think, to the best of my
11 recollection, soon after the lawyers. I imagine there was some
12 discussion among themselves as to whether or not as to -- I
13 know there was a question of who was allowed to see it. I
14 think the determination was that I was allowed to as kind of
15 the in-house counsel, but I was instructed that I could not
16 share it with others.

17 MR. BEDARD: And I would just object to the extent
18 now that we've gotten to there, to attorney-client privilege
19 communications with counsel. I understand Mr. Cross has been
20 very, you know, clean with his questions.

21 But to the extent we're getting into when, you know,
22 he made decisions or who he heard it from, what the basis was
23 from that, I think he has answered it based on advice of legal
24 counsel, and I think we can end there.

25

1 BY MR. CROSS:

2 Q. So as you sit here, you don't have a specific recollection
3 of yourself reading Dr. Halderman's report in the summer of
4 2021 around the time that it was provided to your counsel; is
5 that fair?

6 MR. BEDARD: Objection. I think it misstates what
7 his testimony was.

8 MR. CROSS: Well, why don't we let him answer and
9 see.

10 BY MR. CROSS:

11 Q. You don't have any specific recollection doing that as you
12 are sitting here; is that fair, sir?

13 A. I recall reading the Halderman report.

14 Q. And my question is: As you sit here, you don't have a
15 specific recollection of doing that at the time that we
16 provided it to your outside counsel? You can't say that you
17 did that within days or weeks of receiving; is that fair, sir?

18 MR. BEDARD: Objection again. Calls for speculation
19 as to his knowledge about when we received it. He can't speak
20 to when we received it and the timing of that.

21 THE COURT: Well, he can --

22 MR. CROSS: Well, I'll take that as a stipulation,
23 that their general counsel has no idea when their outside
24 counsel received the Halderman report.

25 MR. BEDARD: Your Honor, that is obviously not a

1 stipulation, but I'll leave it there.

2 MR. CROSS: It is literally what he just said.

3 THE COURT: Well --

4 THE WITNESS: I recall that I was allowed to see it,
5 I assume, fairly soon after the outside counsel received it,
6 but again, I was instructed that I was not allowed to forward
7 it on to other people at SOS.

8 BY MR. CROSS:

9 Q. Let me try it this way: You can't give this Court any
10 time frame in which you yourself read that report in the two
11 and a half years since it was provided to your outside counsel;
12 is that fair?

13 A. My recollection is that I was provided it soon after.
14 Again, the timing, I can't exactly say. My impression was that
15 I was provided it soon after outside counsel was.

16 Q. But as your own lawyer pointed out, you actually don't
17 know when they got it; right?

18 A. I don't know specifically, but again, my impression was
19 this was, this was something I was involved in, and so it was
20 not something that happened, you know, months before.

21 My impression, again -- I feel like you are kind of
22 misstating it -- is that I received it soon after they received
23 it, read it, was instructed based on the classification by the
24 Court that I could not forward it to others at SOS.

25 Q. And so do I understand correctly, the point at which you

1 received it, you read it, to your knowledge, no one else in the
2 Secretary's office read it at that time because your
3 understanding was you could not share it with anyone else in
4 the office?

5 **A.** That's correct, based on how it was classified.

6 **Q.** And do you understand that it was actually your counsel
7 that insisted on treating the report as attorneys' eyes only
8 throughout most of 2021?

9 **A.** I'm not aware of that one way or the other.

10 **Q.** So do you know who made the decision to ask this Court on
11 behalf of you as the client to treat the Halderman report as
12 attorneys' eyes only throughout most of '21?

13 MR. BEDARD: Objection, Your Honor, as to relevance.
14 I don't understand why it is relevant whether he has an
15 understanding about why litigation counsel in this case did or
16 did not make a request for it to be treated as attorneys' eyes
17 only. Frankly, even if it did, it would be attorney-client
18 privilege anyway.

19 MR. CROSS: Do you want me to respond?

20 MR. BEDARD: And work product, for that matter.

21 THE COURT: Go ahead.

22 MR. CROSS: It is important, Your Honor, because one
23 of the points we make and our expert will make is when this
24 report was provided to the State in July of 2021, they had a
25 duty to take it seriously, as Governor Kemp himself actually

1 later called Secretary Raffensperger out, which is what led to
2 the reversal of their position on sealing it.

3 And so the fact that the only person who read this
4 was an in-house lawyer and they were telling the Court that
5 they were the ones that were limiting that disclosure, he
6 couldn't share it with anyone else, meaning no one could take
7 any actions and it is their lawyers doing it, we're entitled to
8 know whether that was an informed decision by the part of the
9 Secretary's office or someone else.

10 I literally only have probably one or two questions.
11 I'm just trying to figure out who at the Secretary's office
12 made that decision.

13 THE COURT: You can ask that.

14 MR. BEDARD: Again --

15 THE COURT: He can ask who made the decision that --
16 and, you know, he said, who in the Secretary's office made the
17 decision?

18 He is entitled to ask that question.

19 MR. BEDARD: Again, Your Honor, if it is based on his
20 conversations with legal counsel --

21 THE COURT: I'm going to allow him to ask that
22 specific question.

23 BY MR. CROSS:

24 Q. Mr. Germany, just yes or no, do you know who, if anyone,
25 at the Secretary's office made the decision to ask this Court

1 throughout most of 2021 to treat Dr. Halderman's report as
2 attorneys' eyes only?

3 **A.** To the extent that -- I can't really answer that. To the
4 extent that it was a decision made, it would have been in
5 conjunction with outside counsel, and that would have been in
6 conjunction with me. I don't think it would have been anyone
7 else involved at SOS office. I don't recall making that -- I
8 don't recall making that decision or that request.

9 I guess I should say I know there was a general concern, I
10 think, throughout the process with Halderman and given whatever
11 access he was given or whatever reports, I think there was --
12 that was something discussed throughout this litigation.

13 **Q.** As you sit here as former general counsel helping with
14 strategic decisions in this litigation, you are not aware of
15 anyone else making that decision at the Secretary's office; is
16 that fair?

17 **A.** I don't --

18 MR. BEDARD: Asked and answered, Your Honor.

19 THE COURT: Overruled. Go ahead. Answer the
20 question.

21 THE WITNESS: I'm not sure I follow.

22 BY MR. CROSS:

23 **Q.** As the former general --

24 **A.** I think what I just said is, I don't really think that was
25 a decision that was made at the Secretary of State's office.

1 Q. I got you. Thank you. Sorry. I misunderstood that.

2 At some point you did understand that you were allowed to
3 share Dr. Halderman's report with other individuals within the
4 Secretary's office; is that right?

5 A. Yes.

6 Q. And the -- again, you testified earlier that you would
7 make the decision on the appropriate people to receive
8 information about the litigation.

9 Did you make the decision on who the appropriate people
10 were to read that report?

11 A. I would have made that decision kind of in conjunction
12 with outside counsel and also speaking with other people at the
13 Secretary of State's office.

14 Q. Are you aware that -- well, let me take a step back.

15 You know who Merritt Beaver is; right?

16 A. Yes.

17 Q. Former chief information officer of the Secretary's
18 office?

19 A. Correct.

20 Q. Were you aware that Merritt Beaver had not read
21 Dr. Halderman's report when he was deposed in 2022?

22 A. I was not aware of that.

23 Q. Was it your decision not to share that report with your
24 chief information officer?

25 A. I can't say whether it was shared with him or not.

1 Q. So you don't know why the report was never shared with
2 him?

3 A. I can't say if it was shared with him or not. I may have
4 shared it with him; I may not. I can't recall.

5 Q. So as you sit here, you don't have any explanation to
6 provide to the Court as to why the chief information officer
7 had not received that report by the time he was deposed in
8 2022?

9 MR. BEDARD: Again, objection, Your Honor. He's
10 already testified he wasn't aware about when or if Mr. Beaver
11 had seen it.

12 MR. CROSS: The question is whether he has an
13 explanation of why that is.

14 MR. BEDARD: Again, that is --

15 THE COURT: Do you have an explanation or not, and if
16 so, can you tell us what the explanation is?

17 THE WITNESS: I -- I don't know -- I don't know if I
18 sent it to Merritt or not, so I can't answer that -- that
19 question.

20 BY MR. CROSS:

21 Q. Okay. Were you aware that -- well, sorry. Take a step
22 back again.

23 Do you know who David Hamilton is?

24 A. Yes.

25 Q. Were you aware that David Hamilton was the chief

1 information security officer for the Secretary's office for a
2 period of time while you were the general counsel?

3 **A.** Yes.

4 **Q.** Were you aware that Mr. Hamilton testified in his 2022
5 deposition that he also had not seen Dr. Halderman's report?

6 **A.** No.

7 **Q.** Were you aware that he testified that he also had not
8 learned about the in-court hacking demonstration of a BMD that
9 Dr. Halderman had done in September of 2020?

10 **A.** I am not aware of that.

11 **Q.** I may have assumed something there.

12 Are you yourself aware that in September of 2020,
13 Dr. Halderman did a video demonstration where he showed how you
14 could alter the BMD equipment, the printer in particular, to
15 print a ballot where the QR code would not match the selections
16 on the screen? Were you aware of that?

17 MR. BEDARD: Objection -- sorry, David.

18 Did you finish your question?

19 MR. CROSS: Yes.

20 MR. BEDARD: Objection. Assumes facts not in
21 evidence. Mr. Halderman has not testified yet. They haven't
22 put up any evidence about anything Mr. Halderman was able to
23 do.

24 THE COURT: All right. I can take judicial notice of
25 the fact that that occurred. The Court has written orders

1 about this. It is in the record of this case. Let's -- that
2 is not a viable objection in any way, and so please let's not
3 have an objection for every question asked unless it is really
4 meritorious. Thank you.

5 BY MR. CROSS:

6 **Q.** Were you aware of that, Mr. Germany?

7 **A.** So I'm aware there was an under seal hearing -- yes, I
8 recall that.

9 **Q.** So were you aware that when Mr. Hamilton, the former CISO
10 for the Secretary's office, testified in 2022 in his deposition
11 that no one had ever informed him about that hack
12 demonstration?

13 **A.** I'm not aware of that.

14 **Q.** Did you yourself make the decision -- as part of your
15 responsibilities on updating the appropriate individuals at the
16 Secretary's office, did you yourself make the decision not to
17 share that with him?

18 **A.** I don't -- I can't recall if I shared it with him or not.

19 **Q.** As you sit here, you don't know who at the Secretary's
20 office or among your outside counsel made the decision not to
21 share that with him, you just don't know?

22 **A.** I don't know if I shared it with him or not.

23 **Q.** You are familiar with Gabe Sterling?

24 **A.** Yes.

25 **Q.** Chief operating officer of the Secretary's office?

1 **A.** Yes.

2 **Q.** You had frequent dealings with Mr. Sterling?

3 **A.** Yes.

4 **Q.** Were you aware that Mr. Sterling testified in 2022 in his
5 deposition in the spring of that year that he also had not seen
6 the Dr. Halderman report? He had not read it?

7 **A.** I'm not aware of that.

8 **Q.** So fair to say, as you sit here, you don't know who made
9 the decision within the Secretary's office on who would get
10 access to Dr. Halderman's report and who wouldn't once the
11 Court made clear in late 2021 that individuals could, in fact,
12 read it?

13 **A.** I think what I'm trying to say is when it was made clear
14 that I could share it with people, I got with outside counsel
15 and determined, okay, who do we need to share this with?

16 So now the problem is, sitting here, I can't remember who
17 those people were. So you keep sayings things like, you
18 decided not to.

19 I can't remember if I shared it with him or not, and I
20 think that is pretty clear in my answers. There's definitely
21 people that I would have shared it with. I know the Secretary
22 is one of them. But I don't want to speculate as to who else I
23 shared that report with because I can't recall.

24 **Q.** And that was exactly what I was going to ask you next.

25 Can you give us a list of the individuals that you

1 identified and decided to share the report with once you
2 understood you were allowed to do so?

3 **A.** Sitting here today, I can't do that.

4 **Q.** Well, you said the Secretary himself was one of them;
5 right?

6 **A.** Yes.

7 **Q.** And when did you share it with him?

8 **A.** I can't recall when I would have shared it with him. My,
9 kind of to the best of my recollection or what I would have
10 done, is I would have shared it with him as soon as I was
11 allowed to.

12 **Q.** Do you know whether he read it?

13 **A.** I believe he read it.

14 **Q.** Do you know that he read it?

15 **A.** I don't know.

16 MR. CROSS: Your Honor, may I approach for an
17 exhibit?

18 THE COURT: Yes.

19 BY MR. CROSS:

20 **Q.** Mr. Sterling [sic], do you recognize the document I have
21 handed you? Do you recall if this is something you have seen
22 before on your work on the discovery responses in this case?

23 **A.** I -- I mean, I recognize it based on its title. It is not
24 something that I recall seeing, but it is something that in --
25 generally in my scope of duties I would have seen and reviewed.

1 Q. You haven't memorized every discovery response you looked
2 at in this case?

3 A. No, sir.

4 Q. The title of this one is Curling Plaintiffs' Second Set of
5 Interrogatories to State Defendants.

6 Do you see that?

7 A. Yes.

8 Q. And if you flip to Page-- well, there is not a page
9 number. If you flip to where you'll see the heading,
10 Interrogatories, it is about probably four or five pages in.

11 Do you see that?

12 A. Yes.

13 Q. And you've dealt with interrogatories as counsel in
14 litigation before; right?

15 A. Yes.

16 Q. I was about to explain what they are, but we're not in a
17 jury trial, and I think the Judge probably knows, so I'll skip
18 that.

19 You see the first one is Interrogatory Number 15?

20 A. Yes.

21 Q. And the question there that we posed to the State
22 defendants was, describe with specificity each known attempted
23 or suspected --

24 MR. CROSS: You okay? Would you like some water? Do
25 you need some water?

1 UNIDENTIFIED SPEAKER: I'm good. Thank you, though.

2 BY MR. CROSS:

3 **Q.** Interrogatory 15, describe with specificity each known
4 attempted or suspected security vulnerability or security
5 breach involving any part of Georgia's current election system,
6 including describing with specificity any and all types of all
7 information accessed, exposed, lost, altered, modified,
8 manipulated, deleted, taken, copied, or stolen, or otherwise
9 affected as a result of any such security vulnerability or
10 security breach.

11 Do you see that, sir?

12 **A.** Yes.

13 **Q.** And then if you flip to the very last page, you'll see
14 that we served this on July 16, 2021, on the State defendants.
15 Do you see that?

16 **A.** Yes.

17 MR. CROSS: Okay. May I approach again, Your Honor?

18 THE COURT: Yes.

19 BY MR. CROSS:

20 **Q.** So, Mr. Germany, do you see in front of you State
21 defendants' responses and objections to Curling plaintiffs'
22 second set of interrogatories?

23 **A.** Yes.

24 **Q.** And if you come to the last page, this does have page
25 numbers, so you guys did a little better job than we did on

1 that.

2 If you get to Page 20, do you see it is signed by Vincent
3 Russo on August 23rd of 2021?

4 **A.** August 24th, 2021.

5 Second-to-last page?

6 **Q.** Oh, you're looking at the date of service.

7 Yeah, if you come a little above to Page 20 it is actually
8 signed on August 23rd.

9 **A.** Okay. Yes, I see that.

10 **Q.** Now, if you come to Interrogatory 15 again, if you would,
11 which is on Page 3, do you see here it is the same
12 interrogatory that we served and what you just looked at in the
13 prior exhibit?

14 **A.** Yes.

15 **Q.** And if you flip through it, you'll see that there is --
16 there are two paragraphs of objections, and then if you get to
17 Page 5, you'll see there is a substantive response beginning
18 with, subject to and without waiving the foregoing objections.

19 Do you see that?

20 **A.** Yes.

21 **Q.** Here, State defendants list below a non-exhaustive summary
22 of examples of alleged vulnerabilities.

23 Do you see that?

24 **A.** Yes.

25 **Q.** There are four bullets; right?

1 **A.** Yes.

2 **Q.** Each one of the bullets there involves allegations from
3 plaintiffs or their experts; is that right?

4 **A.** Yes.

5 **Q.** There is no mention in any of those bullets of any
6 attempted unauthorized access or actual unauthorized access in
7 Coffee County; is that right, sir?

8 **A.** That's correct.

9 **Q.** And this is in July of 2021, as we just saw, is when this
10 response was signed and submitted; is that right, sir?

11 **A.** Yes.

12 **Q.** And if you look down at the bottom, it also indicates that
13 State defendants at this point in July of 2021 -- sorry, August
14 I'm sorry, I had that wrong.

15 So in August -- in August 23rd of 2021, State defendants
16 themselves still had not reviewed Dr. Halderman's report.

17 Do you see that?

18 **A.** Yes.

19 **Q.** And it goes on to say, at this time, State defendants lack
20 knowledge about vulnerabilities claimed in the report.

21 Do you see that?

22 **A.** Yes, I see that.

23 **Q.** Did you have a -- just yes or no -- any role in helping to
24 put this response together?

25 **A.** Generally, my role would have -- I would have reviewed

1 discovery responses.

2 **Q.** Including this one?

3 **A.** I can't specifically recall, but generally, yes, I would
4 think it would have included this one.

5 **Q.** As you sit here, you would have no reason to believe that
6 anything in that response is inaccurate?

7 **A.** Correct.

8 **Q.** In responding to discovery in this case based on your
9 experience and your involvement, is it your view that the
10 Secretary's office made an effort to be accurate?

11 THE WITNESS: Yes.

12 MR. CROSS: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. CROSS:

15 **Q.** Just for the record, the requests that I provided you were
16 Exhibit 579, the responses were Exhibit 580, and this is
17 Exhibit 581.

18 Do you recognize this as something you've seen before?

19 **A.** No.

20 **Q.** Were you aware that after we served -- strike that.

21 Were you aware that after we received your August
22 responses to these interrogatories, we served a narrative
23 revised set on your outside counsel?

24 **A.** I can't say, sitting here today, that I was specifically
25 aware of that.

1 Q. So if you read what is written here as an Interrogatory
2 Number 15 -- do you have that in front of you?

3 A. Yes.

4 Q. Here it states, Describe with specificity each successful
5 or attempted instance of unauthorized access to or copying or
6 alteration of data on any of the following specific equipment
7 used in any election in Georgia since Georgia adopted Dominion
8 BMDs.

9 And the equipment delineated is: Dominion BMDs, printers
10 used with BMDs, scanners used to scan ballots, servers
11 containing election management system software for use with any
12 Dominion BMD, and servers, laptops, desktop computers, tablets,
13 Smart phones, and removable media used to collect, tally,
14 record, transmit, design, or audit voting information.

15 Do you see that, sir?

16 A. Yes.

17 Q. And so as you sit here, you don't have a specific
18 recollection of working with your counsel to respond to that
19 narrowed request?

20 A. Correct.

21 MR. CROSS: May I approach, Your Honor?

22 THE COURT: Are you submitting this as --

23 MR. CROSS: I was going to submit them all at one
24 time.

25 THE COURT: All right. That is fine.

1 MR. CROSS: I was going to lay the foundation with
2 each of them.

3 THE COURT: This one doesn't have a date. That is
4 why I was wondering.

5 MR. CROSS: Right.

6 BY MR. CROSS:

7 Q. So, Mr. Germany, you should have in front of you what's
8 marked as Exhibit 582.

9 Do you see that?

10 A. Yes. Well, I don't see it marked, but --

11 Q. Okay. But do you see at the top it says, response to
12 revised Interrogatory 15?

13 A. Yes.

14 Q. And you see at the first, it begins with a paragraph where
15 the State defendants continued to object to the interrogatory.

16 Do you see that?

17 A. I mean, I take your word for it that this is from the
18 State defendants.

19 Q. We've got a verification. We can jump to that if you
20 would like.

21 MR. CROSS: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. CROSS:

24 Q. So the document I just handed you will be Exhibit 583.

25 Do you see it is entitled Verification for Interrogatory

1 Response?

2 **A.** Yes.

3 **Q.** It references State defendants' responses and objections
4 to Curling plaintiffs' second set of interrogatories dated
5 August 23, 2021.

6 Do you see that?

7 **A.** Yes.

8 **Q.** Do you see it is signed under oath by Gabriel Sterling?

9 **A.** Yes.

10 **Q.** And you see the date of the response is August 23, 2021,
11 corresponds to the signed responses in Exhibit 580 we looked at
12 a moment ago on Page 20 of those responses signed by Mr. Russo?

13 **A.** Yes. What I was referring to was this latest thing.

14 **Q.** We're going to get there.

15 MR. CROSS: Tony, can you pull up the January 3rd
16 email?

17 I apologize, Your Honor. We've had -- our printer
18 went down, and so we're -- we will get this in hard copy.
19 Right now, I just have it on the screen.

20 THE COURT: That's fine.

21 BY MR. CROSS:

22 **Q.** Vincent Russo is one of the lawyers that represents the
23 State in this case; is that right?

24 **A.** Yes.

25 **Q.** If you see here, you see an email from Mr. Russo to me on

1 January 3rd of 2024?

2 **A.** Yes.

3 **Q.** And do you see here he writes, apologies for the delay
4 responding. To confirm, it is our position that defendants'
5 verification includes defendants' October 21, '21, responses to
6 the supplemental rogs.

7 Do you see that?

8 **A.** Yes.

9 **Q.** And so the -- so the confirmation we got a few days ago
10 from Mr. Russo was that the verification in Exhibit 583 is for
11 the revised responses in Exhibit 582.

12 Do you understand that now?

13 **A.** Yes, but I guess what I'm saying is, I don't see anything
14 on here, and I tell you, I'll take your word for it, but it is
15 not like in an email or anything.

16 **Q.** All right. And I understand that happened, obviously,
17 after you left. This email came in after you left the office.

18 All right. So take a look at Exhibit 582, which is
19 verified by the State under oath.

20 And you come to the second paragraph. Do you see the
21 second sentence that begins with, you asked?

22 You asked State defendants, second sentence, second
23 paragraph.

24 **A.** Yes, I see that.

25 **Q.** And it states, You asked State defendants to, quote,

1 describe with specificity each successful or attempted instance
2 of unauthorized access to or copying or alteration of the
3 following.

4 And then there is a list of different types of equipment
5 and components that work with the BMD system in the State
6 today; right?

7 **A.** Yes.

8 **Q.** And in these responses provided in October of 2021, as we
9 just saw from Mr. Russo's email, there is no mention of the
10 breaches in Coffee County that occurred in January of 2021;
11 correct, sir?

12 **A.** I don't -- in reading the response, I don't see any
13 mention of Coffee County.

14 **Q.** At all?

15 **A.** Correct.

16 **Q.** If you come to the last paragraph of the response of
17 Interrogatory 15 before we get to 16, you see it begins with,
18 in an effort?

19 **A.** Yes.

20 **Q.** Here it states, The State defendants stated under oath, in
21 an effort to provide information responsive to this request,
22 State defendants respond that they do not have knowledge of any
23 election equipment used with the Dominion election system being
24 hacked in an election in Georgia.

25 Do you see that?

1 **A.** Yes.

2 **Q.** In your work as general counsel at this time helping with
3 discovery responses, yes or no, do you have any knowledge or
4 understanding as to why the State defendants decided to say
5 that they were not aware -- they had no knowledge of the system
6 being hacked, rather than answering the question we asked,
7 which they quote as simply whether there was successful or
8 attempted instance of unauthorized access to the equipment?

9 MR. BEDARD: First off, I'll object, Your Honor, as
10 to the attorney-client privilege and work product.

11 But beyond that, I also object to the extent that
12 Mr. Cross thought that our answers to his interrogatories were
13 insufficient, he could have brought it up during discovery, he
14 could have moved to compel. They chose not to --

15 **(Unintelligible cross-talk)**

16 MR. CROSS: You don't want to raise this.

17 MR. BEDARD: -- the answer is sufficient. He is
18 trying to badger a witness now about interrogatory responses,
19 whether they were sufficient. If it was a discovery request
20 issue, we could have dealt with it in discovery.

21 THE COURT: I think this was -- there was a lot of
22 discovery conferences, and I -- you know, I don't know that you
23 were part of all of those, but you are assuming that. But I'm
24 just going to say this.

25 I mean, yes, go ahead, Mr. Russo, since you were

1 handling it.

2 MR. RUSSO: Sure, Your Honor. And --

3 THE COURT: Would probably be more appropriate.

4 MR. RUSSO: Mr. Germany and I can discuss his
5 involvement in it later. He didn't recall it as he's
6 testifying.

7 But we, of course, didn't know -- the Coffee County
8 phone call was not disclosed until 2022.

9 MR. CROSS: That's not an objection. That's
10 testimony, and we've got a witness on the stand.

11 MR. RUSSO: Well, but I think --

12 MR. CROSS: And I'm sending --

13 THE COURT: I mean, you are going --

14 MR. CROSS: You'll see in a moment, Mr. Russo.

15 THE COURT: Let me just say this --

16 MR. CROSS: Sorry, Your Honor. That is not an
17 appropriate --

18 THE COURT: You know what? The phone call is not the
19 only thing that happened, but -- by any means. But whether
20 he -- I think he is entitled to ask him the question as a --
21 not in his litigation capacity, but does he know?

22 He is in a critical position within the department,
23 and either he does know or he doesn't know in response to that
24 and without reference to consultation with all of you.

25 MR. BEDARD: Fair enough, Your Honor. I just wanted

1 clarification, I think, on the Judge's perspective. I agree
2 that Mr. Cross can ask him if he was aware of the Coffee County
3 situation at the time of these interrogatories. But I believe
4 the question was, Are you aware of why the State chose to
5 answer this way?

6 That is what my objection was to, so --

7 THE COURT: All right. Why don't you restate your
8 question in light of that discussion.

9 MR. CROSS: Yes.

10 BY MR. CROSS:

11 Q. Just yes or no -- I'm not looking for any specifics or
12 substance. Just yes or no.

13 Do you have any knowledge or insight on why the
14 Secretary's office -- strike that.

15 Do you have any insight or knowledge on why State
16 defendants, including both the SEB and the Secretary's office,
17 answered this interrogatory under oath by saying they had no
18 knowledge of the system being hacked, rather than simply
19 answering whether they were aware of successful or attempted
20 instance of unauthorized access? Just yes or no, do you know?

21 MR. BEDARD: Same objection, Your Honor.

22 THE WITNESS: I can't speak to specifically why. The
23 way that discovery responses are worded, that is put together
24 by outside counsel and then we generally review them.

25 So no, I can't speak to why it was worded that way.

1 THE COURT: Well, put aside the wording.

2 THE WITNESS: I can say we had no knowledge of the
3 Coffee County thing until the telephone -- the phone call came
4 out in Gabe's deposition.

5 BY MR. CROSS:

6 Q. In fact --

7 A. In this response, we were certainly not covering up
8 something by any kind of artful wording that we were otherwise
9 aware of.

10 Q. In fact, you yourself represented that under oath in a
11 declaration in this case to this Court in the summer of 2022.

12 Do you recall representing to this Court under oath that
13 the Secretary's office had no knowledge of a potential
14 unauthorized access in Coffee County before March of 2022?

15 A. Yes.

16 MR. CROSS: Can we pull up Exhibit 78, please? This
17 is already in evidence, I believe.

18 THE COURT: What is this exhibit number?

19 MR. CROSS: 78. 78. Curling Plaintiffs'
20 Exhibit 78 -- or Plaintiffs' Exhibit 78.

21 BY MR. CROSS:

22 Q. So, Mr. Germany, if we come down to the bottom, the first
23 email here from James Barnes, do you know who James Barnes is?

24 A. James Barnes, I recall, was the election director in
25 Coffee County subsequent to -- after Misty Hampton was fired

1 from Coffee County.

2 **Q.** And here we have Mr. Barnes emailing Chris Harvey on
3 May 7th of 2021.

4 Do you see that?

5 **A.** Yes.

6 **Q.** Do you recall that Mr. Harvey was the State supervisor of
7 elections at this time; right?

8 **A.** Yes.

9 **Q.** And Mr. Barnes reports to Mr. Harvey in response to an
10 email received from Dominion that day specifically warning
11 counties about Cyber Ninjas, he says the email was alarming to
12 him. Mr. Barnes writes that.

13 Do you see that?

14 **A.** Yes.

15 **Q.** He then goes on to say, When I took over at the Coffee
16 County office, the attached business card was at the base of
17 Misty Hampton's -- Misty Hayes' computer monitor.

18 Do you see that?

19 **A.** Yes.

20 MR. CROSS: Could we pull up the card, Tony?

21 BY MR. CROSS:

22 **Q.** And you see this is a card attached to his email that has
23 Doug Logan of Cyber Ninjas.

24 Do you see that?

25 **A.** Yes.

1 MR. CROSS: Tony, let's go back to Exhibit 78, the
2 first page.

3 BY MR. CROSS:

4 Q. Then you see Mr. Harvey responds four days later on
5 May 11th, and he includes Frances Watson and Michael Barnes.

6 Do you see that?

7 A. Yes.

8 Q. Ms. Watson, at the time, was the head of the investigative
9 unit for the Secretary's office; correct?

10 A. Yes.

11 Q. Mr. Barnes was and still is head of CES; right?

12 A. Yes.

13 Q. Mr. Harvey writes, thanks for sending this. I think it
14 might be prudent to see if there has been any contact between
15 the person on the card and anyone in your office and/or if they
16 have had any access -- access to any of your equipment.

17 Do you see that, sir?

18 A. Yes.

19 Q. And then he specifically, as he testified today, directed
20 Ms. Watson to investigate that.

21 Were you aware of that, sir?

22 A. I see it.

23 Q. I'm sorry?

24 A. I see that it says he has let our investigations division
25 and CES know.

1 Q. Were you aware of this at the time?

2 A. I can't recall, specifically. It does seem like something
3 that Chris and I would have talked about, just given our kind
4 of working relationship.

5 Q. So you would have expected him to raise this with you at
6 the time?

7 A. I think he would have.

8 Q. But as you sit here, you have no reason to believe he did
9 not?

10 A. Correct.

11 Q. Ms. Watson then forwards this email on very quickly,
12 within half an hour, to Pamela Jones.

13 Do you see that?

14 A. Yes.

15 Q. Pamela Jones was an investigator in the Secretary's
16 investigative unit at this time; correct, sir?

17 A. Yes.

18 Q. And the specific directive from -- the specific directive
19 from Ms. Watson to the investigator was, can you contact the
20 county and verify what, if any, contact Cyber Ninjas had with
21 any election equipment?

22 Do you see that?

23 A. Yes.

24 Q. And do you recall that Ms. Jones tasked Agent -- or
25 Investigator Blanchard with that investigation?

1 **A.** I am not aware of that.

2 **Q.** And were you -- well, you've been sequestered.

3 Mr. Harvey testified today that the concern he had here --
4 his own words -- his worst fear, they were investigating this
5 to determine whether it was his worst fear that someone had had
6 unauthorized access to the voting equipment.

7 Do you recall discussing his worst fear with him in May of
8 2021?

9 **A.** No. I don't recall any wording like that.

10 **Q.** So again, as of May of 2021, the Secretary's office at the
11 level of the State superintendent of elections, the head of the
12 investigative unit was specifically investigating whether there
13 had been access to election equipment in Coffee County; right,
14 sir?

15 MR. BEDARD: Objection. Calls for speculation.

16 THE WITNESS: I don't know that I would agree with
17 that characterization. I think --

18 THE COURT: Objection overruled.

19 Go ahead.

20 THE WITNESS: I don't know that I would agree with
21 that characterization.

22 BY MR. CROSS:

23 **Q.** Well, Mr. Harvey is the one who tasked Ms. Watson with
24 this investigation; right?

25 We just agreed on that.

1 We can see it on the screen; right, sir?

2 **A.** Yes.

3 **Q.** His directive to her again, we can read it again, that she
4 is to investigate whether they -- meaning Cyber Ninjas -- have
5 had any access to any of your equipment, the election
6 equipment.

7 **A.** I see the email.

8 **Q.** Okay. So again, we're agreed that as of May 11, 2021, the
9 State superintendent of elections had directed the head of
10 investigations in the Secretary's office to investigate whether
11 there had been potential access to voting equipment in a county
12 office; right, sir?

13 **A.** I guess I'm not sure how Frances took this. I mean, I
14 guess he would have said in the email where it is.

15 **Q.** Go ahead.

16 **A.** No, that's fine.

17 **Q.** No. I don't want to cut you off. I'm sorry.

18 **A.** So I see what it says in the email where Chris says to
19 James, I think it would be prudent to see if there had been any
20 contact between the person on the card and anyone in your
21 office.

22 He has let our investigations division know. And then
23 Frances asked Pam to contact the county and see what, if any,
24 contact Cyber Ninjas had with any election equipment.

25 So that is -- I can't speak today to what was done after

1 that from in regards to this email.

2 **Q.** Is it your position, as you sit here today as the former
3 general counsel of the Secretary's office, that this
4 investigation specifically into whether there had been access
5 to voting equipment by Cyber Ninjas in May of 2021, that that
6 is not responsive to a request about whether there had been
7 successful or an attempted instance of unauthorized access,
8 copying, or alteration of data on election equipment used in
9 Georgia? Is that your position, sir?

10 **A.** I would say that the appearance of a business card on
11 someone's desk was not something that certainly set off my
12 alarm bells of, you know, what actually had ended up happening
13 in Coffee County. That was not something that -- and talking
14 to Chris, that was not something that basically led us to know
15 that.

16 THE COURT: But what about the letter itself, this
17 document itself?

18 THE WITNESS: What about the email?

19 THE COURT: Yeah, the email chain that clearly
20 indicates that Mr. Barnes was very concerned, and then
21 Mr. Harvey responded in kind and thought it was appropriate to
22 follow up with -- some sort of investigation and asked
23 Ms. Watson who is head of -- is it Ms. or Mr., I don't know --
24 but investigations to contact and verify what, if any, contact
25 the Cyber Ninjas had with the election equipment.

1 I mean, I think that what counsel is asking you is --
2 well, I'm not going to even guess what he --

3 THE WITNESS: Well, what I will say is if --

4 THE COURT: He's not asking you just simply what you
5 think about a card, he's asking you something more in
6 connection with their outstanding interrogatories.

7 THE WITNESS: I can say that I certainly didn't have
8 any knowledge, and I don't think anyone else at the Secretary
9 of State's office had any knowledge at this time what had
10 happened in Coffee County, because when we did have knowledge
11 of that, I was very much aware of kind of when that was figured
12 out.

13 So I don't think that -- I think one of the
14 difficulties, you know, at this point, was Misty Hampton was no
15 longer there. She wasn't someone to -- I'm not sure what the
16 investigators did to follow up. In looking back, I think it is
17 easy to say, I wish they had done more based on the appearance
18 of this business card.

19 But I'm not sure that they did at that point because
20 I know that is something that we didn't know about until it was
21 raised in that phone call with Scott Hall.

22 BY MR. CROSS:

23 Q. So I just want to make sure we're not missing each other,
24 Mr. Germany.

25 I understand that in summer of 2021, the Secretary's

1 office did not have the knowledge we have today of what all
2 transpired in Coffee County on January of 2021; right?

3 **A.** Correct.

4 **Q.** But I just want to be clear: The question that was posed
5 and answered under oath was, describe a successful -- any
6 successful or attempted instance of unauthorized access to or
7 copying or alteration. So any successful or even attempted
8 access, and the investigation here was into whether there was
9 access to the voting equipment.

10 And so my question is simply this: As you sit here, do
11 you maintain that the investigation, the instance that was
12 being investigated here, is not responsive to this request,
13 just yes or no?

14 **A.** I don't think -- I mean, first of all, I don't think that
15 this was something that was like --

16 **Q.** It is just a yes-or-no question, sir.

17 Do you think it is responsive, or is it not?

18 **A.** I don't think that based on the business card and the
19 subsequent email that that describes a successful or attempted
20 instance of unauthorized access. And I certainly say that in
21 responding to these, to the best of my recollection, it wasn't
22 like something we were trying to kind of work around,
23 basically.

24 So no, this was a business card on a -- on a desk, so I
25 don't think that is evidence of successful or attempted

1 unauthorized access.

2 **Q.** So your answer is you think it is not responsive?

3 **A.** I think so. I mean, you know, I'm not the one who's
4 basically, I think, coming up with responses to
5 interrogatories. It is a complicated thing, of course, and
6 there are objections and there's all of that, so --

7 **Q.** Well, let me ask you this: When the State defendants
8 responded to this interrogatory, again just yes or no, do you
9 know whether anyone talked to Ms. Watson and posed this
10 question to her, just yes or no?

11 **A.** I don't know.

12 **Q.** Do you know whether anyone posed this question to
13 Mr. Harvey?

14 **A.** I don't know.

15 **Q.** Do you know whether anyone posed this question to
16 Investigator Blanchard?

17 **A.** What do you mean by this question? I guess I should --

18 **Q.** Question 15. Interrogatory 15.

19 **A.** So no, we wouldn't -- generally, you would not -- we would
20 not send interrogatories to -- you know, we would work with
21 them to try to come up with responses to see what we needed to
22 include.

23 **Q.** Okay. So let's use your language.

24 Do you know in responding to this, yes or no, whether
25 anyone worked with Investigator Blanchard to prepare the

1 response to this under oath?

2 **A.** I don't know.

3 **Q.** Do you know whether anyone worked with Investigator Jones?

4 **A.** I don't know, but I just don't think the insinuation you
5 are trying to make is a correct one based on sort of what we --

6 **Q.** I didn't ask you a question, sir. Your counsel will give
7 you all the time you want to explain.

8 The -- can you identify anyone that the individuals who
9 prepared this response worked with, in your words, to put this
10 response together under oath on behalf of the State defendants?

11 **A.** They -- I'm sorry?

12 **Q.** Can you identify one person?

13 **A.** They would have worked with me.

14 **Q.** Anyone else?

15 **A.** Because Gabe verified, I think we would have worked with
16 Gabe. Generally, what I would do is work with people who I
17 think would have any specific knowledge.

18 THE COURT: Well, did you work with Mr. Harvey? Did
19 you ask Mr. Harvey since he was in contact with these offices?

20 THE WITNESS: If there was any sort of indication
21 that there was unauthorized access somewhere, that is something
22 that I would have been aware of very, very quickly. Chris and
23 I talked every single day. I don't think that this business
24 card -- this business card and this email did not -- and again,
25 looking back, maybe it should have, but I don't think it is --

1 it certainly did not raise it in that level to myself, and I
2 don't think to Chris, or he would have -- or to Frances, or it
3 would have been communicated to me that this is an instance of
4 either unauthorized access or even potential unauthorized
5 access.

6 THE COURT: Well, he asked her to look into it,
7 though.

8 THE WITNESS: Yes.

9 BY MR. CROSS:

10 **Q.** More specifically into whether there was access to the
11 voting equipment right, sir?

12 **A.** Yes.

13 **Q.** And you testified earlier that you expect -- you have no
14 reason to believe that he did not share this with you in May of
15 2021; right?

16 **A.** Correct.

17 **Q.** And you said that you are the one person who we can
18 identify who helped your outside counsel prepare this response,
19 sir; right?

20 **A.** Yes.

21 **Q.** Okay. And you keep making the point, it is just a
22 business card left there.

23 MR. CROSS: Tony, can we scroll down to Mr. Barnes'
24 email again?

25

1 BY MR. CROSS:

2 Q. Let's be clear about contacts.

3 It wasn't just any business card from anyone in the world.
4 It was Cyber Ninjas; right, sir?

5 A. Yes.

6 Q. And what Mr. Barnes explains here, what prompted his
7 outreach, what prompted his alarm was that just that day he got
8 an email from Dominion specifically warning counties that Cyber
9 Ninjas was looking to get access to voting equipment around the
10 country.

11 Do you recall that, sir?

12 MR. BEDARD: Objection, Your Honor, to hearsay, to
13 the extent he is offering it for the truth of the matter
14 asserted in there.

15 MR. CROSS: I'm not offering it for the truth. I'm
16 offering it for the fact that the statement was made. And
17 again, Dominion is their agent.

18 MR. BEDARD: Your Honor, I think this whole line of
19 questioning is about whether we truthfully answered an
20 interrogatory, which assumes then the truth of what is in that
21 email. So if that is the line of questioning, if he's just
22 asking about his reaction to it, that is something different
23 than what this entire line of questions has been about.

24 THE COURT: I think he's entitled given the
25 centrality of this document and the fact -- I mean, unless

1 the -- the State says this is a false document and it is
2 central to the -- it has never been -- that has never been
3 relayed to me in any fashion during the course of the -- now, I
4 don't know whether -- I mean, it would seem that Mr. Harvey was
5 not thinking there wasn't a Dominion email today. And they are
6 relating to about the Cyber Ninjas. But it really, the
7 question of whether it here is --

8 MR. CROSS: Your Honor, let me -- I'm sorry.

9 THE COURT: He's entitled to explore this question,
10 and that is as simple as I can say.

11 MR. CROSS: Your Honor, I was going to help by just
12 pointing out, we're going to offer -- we're going to have
13 testimony from Mr. Barnes who will authenticate this email and
14 what he received that day, so --

15 THE COURT: So if it is not, you know, we will --
16 you'll have to hook it up at that time.

17 But is there -- I mean, I don't have any reason at
18 this juncture, and for purposes of just moving forward, I'm
19 going to allow them to use it. We can strike this if, in fact,
20 it is not shown as true, but we're not going to waste time
21 going in circles when no one has ever said it was false here,
22 and there is nothing in the entire record of discovery, which I
23 spent enormous amounts of time with counsel, that indicate that
24 Mr. Barnes falsely made a report here.

25 MR. BEDARD: Yes, Your Honor. Just to clarify the

1 record, I'm not saying that the email from Mr. Barnes is false.
2 It is just assuming that the report which he received is itself
3 true.

4 That was just the objection, but I understand, Your
5 Honor's ruling.

6 MR. CROSS: Your Honor, we'll make it easy.

7 Can we pull up Plaintiffs' Exhibit 143?

8 BY MR. CROSS:

9 Q. And I'll just ask you briefly on this: Mr. Germany, do
10 you recognize Exhibit 143? Is this something you have seen
11 before?

12 A. I don't know if -- I think I probably have, but I can't
13 say for certain that I did.

14 Q. You see it is dated May 6, 2021, on Dominion Voting
15 letterhead?

16 A. Yes.

17 Q. Do you see it was actually produced by State defendants
18 themselves, if you look in the lower right-hand corner?

19 A. Yes.

20 Q. And it is entitled Customer Notification: Maintaining
21 Secure Chain of Custody for Your Dominion Voting System.

22 Do you see that?

23 A. Yes.

24 MR. CROSS: We can put that aside. We'll come back
25 to that with Mr. Barnes.

1 BY MR. CROSS:

2 Q. In the May 2021 time frame, the Secretary's office already
3 had an open and ongoing investigation into Coffee County
4 concerning election issues; right, sir?

5 A. I recall opening investigations or open investigations
6 into Coffee County following the 2020 election, yes.

7 Q. Do you recall that there was an investigation that was
8 looking into a YouTube video that showed Misty Hampton, Eric
9 Chaney, and others purporting to do some things on the BMD
10 system?

11 A. Yes.

12 Q. And that investigation was still open and ongoing with
13 Ms. Watson and Mr. Blanchard in the summer of 2021.

14 Do you recall that?

15 A. I can't say when that investigation kind of stopped, but
16 that would -- that is probably the case, that it was still open
17 at this point.

18 MR. CROSS: Tony, can you pull up Tab 20?

19 BY MR. CROSS:

20 Q. Do you recognize this document, sir?

21 A. Yes.

22 Q. What is this?

23 A. Well, I should say I don't know that I recognize this
24 specific one, but this is kind of an example of a case status
25 sheet that Secretary of State's office uses to help track

1 investigations.

2 **Q.** And if you look on this, you see it says, Case summary
3 Coffee County miscellaneous?

4 **A.** Yes.

5 **Q.** Case title SEB 2020 250.

6 Do you see that?

7 **A.** Yes.

8 **Q.** Agent assigned Joshua Blanchard?

9 **A.** Yes.

10 **Q.** Investigator Supervisor Pamela Jones?

11 **A.** Yes.

12 **Q.** Date opened December 9, 2020?

13 **A.** Yes.

14 **Q.** Submitted to supervisor September 28, 2021?

15 **A.** Yes.

16 **Q.** Presented to the board December 14, 2021?

17 **A.** Yes.

18 **Q.** Does this refresh your recollection that the Coffee County
19 investigation that Agent Blanchard -- or Investigator Blanchard
20 was handling at this time was still open in May of 2021?

21 **A.** I don't know that it -- I never had a recollection, but
22 that is what this document shows.

23 **Q.** You don't have any reason to believe that that is not the
24 case?

25 **A.** No.

1 Q. And is it your position that this investigation that was
2 opened in December of 2020 involving the YouTube video and some
3 other issues, that that did not involve the same event that we
4 were looking at that was being investigated by Ms. Watson in
5 the -- responding to Mr. Barnes' email?

6 A. So generally, you know, if we had kind of an open
7 investigation, like this SEB 2020 250, I know included kind of
8 multiple things we were hearing about Coffee County following
9 the 2020 election and then again following the January 2021
10 runoff.

11 So I think given they had an open investigation, that when
12 Frances sent this to Pam -- I'm kind of inferring just based on
13 how stuff generally worked -- that she would have been saying,
14 essentially, add this to the ongoing investigation that you
15 already have.

16 Q. Mr. Germany, let me bring you back to the question I
17 asked.

18 I'm trying to understand if you have a view as the general
19 counsel of the Secretary's office at the time on whether the
20 event that was being investigated in this investigation opened
21 in December of 2020, whether that event was the same or a
22 different event than the one that was being investigated
23 arising out of Mr. Barnes' email in May of 2021.

24 Do you see them as the same event, or do you see them as
25 something different?

1 **A.** Well, the events that led to the opening of this
2 investigation predated that.

3 **Q.** Can you answer my question yes or no? Do you see them as
4 the same event, or no?

5 **A.** I see them as separate events in the same county, and it
6 was kind of practice to basically include those in one
7 investigation number. And a lot of times, it is -- just to
8 clarify, because I think it might help.

9 A lot of times, the events could be completely unrelated,
10 but just for kind of ease of, you know, there is going to be an
11 investigator down there already, go ahead and look into all of
12 these things that we have heard.

13 But no, I would view those as a separate event than the
14 things I'm aware of that were part of the reasons why this
15 cause was initially opened.

16 MR. CROSS: Tony, can we pull up Tab 19, Exhibit 138,
17 please?

18 BY MR. CROSS:

19 **Q.** So, Mr. Germany, if you look in the middle of Exhibit 138,
20 do you see there is an email that you sent internally at the
21 Secretary's office on April 25th of 2022, sir?

22 **A.** Yes.

23 **Q.** And you write Sara.

24 Who is Sara?

25 **A.** Sara Koth was our -- I believe she would have been chief

1 investigator at that time.

2 **Q.** So in April 25th of 2022, this is after the allegations of
3 the breaches in Coffee County had come to light; right?

4 **A.** Yes.

5 **Q.** And you write, Let's reopen this case in investigations,
6 and we can note that it was reopened to deal with new
7 allegations regarding the same event; right, sir?

8 **A.** Yes.

9 **Q.** The same event.

10 And it appears nowhere in response to Interrogatory 15
11 that you helped your counsel prepare; correct, sir?

12 **A.** Correct.

13 I'm sorry. This email?

14 **Q.** Coffee County.

15 **A.** Coffee County does not appear in that; correct.

16 MR. CROSS: If you can go back to the document we
17 just had. Sorry. 145. I don't think we had it up yet. I'm
18 sorry. If you would pull up Exhibit 145.

19 And sorry, Your Honor, I forgot to move Exhibit 138
20 into evidence.

21 THE COURT: Which one was 138?

22 MR. CROSS: That was the one we just had, Ryan
23 Germany's email on April 25th, 2022, referring to these as the
24 same event.

25 THE COURT: Okay. It is admitted.

1 MR. CROSS: Sorry. And also move into evidence
2 Exhibits 579 to 583 which were the interrogatory requests and
3 the responses and the verification.

4 THE COURT: Any objections?

5 MR. TYSON: I apologize, Your Honor. I was reading
6 one of them. What was the full number? It was the --

7 MR. CROSS: 579 to 583, which are the requests, the
8 responses, and the verification.

9 MR. TYSON: No objection, Your Honor.

10 THE COURT: They are admitted.

11 BY MR. CROSS:

12 Q. So do you have Exhibit 145 in front of you?

13 A. Me? I see it on the screen.

14 Q. Okay. So if you turn to the second page of exhibit --
15 well, sorry. We're doing this -- keep falling into the way I
16 used to do this.

17 If you look at Exhibit 145 --

18 MR. CROSS: And, Tony, can you go down -- you are
19 there. Great.

20 BY MR. CROSS:

21 Q. Do you see the email again, we were just looking at, from
22 Mr. Barnes to Mr. Harvey concerning Cyber Ninjas?

23 A. Yes.

24 Q. Do you see Mr. Harvey's response at the top of that page?
25 Do you see that?

1 **A.** Yes.

2 **Q.** And then we'll see at the bottom of first page
3 Ms. Watson's directive to Ms. Jones.

4 Do you see that?

5 **A.** Yes.

6 **Q.** And then we get more.

7 Do you see that Ms. Jones forwards this on to Joshua
8 Blanchard on May 11th, the same day?

9 **A.** Yes.

10 **Q.** You see Mr. Blanchard then responds the same day saying
11 that he spoke with Mr. Barnes who said he and his board have
12 not been able to locate anything showing where Cyber Ninjas did
13 any consulting for Coffee County.

14 Do you see that?

15 **A.** Yes.

16 **Q.** It then goes on. Mr. Barnes said he was going to contact
17 county IT department and have them review Misty's emails to see
18 if there was any correspondence.

19 Do you see that?

20 **A.** Yes.

21 **Q.** Ms. Jones then responds -- or sorry, forwards this on to
22 Frances Watson.

23 Do you see that, sir?

24 **A.** Yes.

25 **Q.** She informs her boss, Apparently, they are still trying to

1 determine if there was any contact, but as far as they can tell
2 so far, there was none.

3 Do you see that?

4 **A.** Yes.

5 **Q.** Ms. Watson responds, Thanks.

6 Do you see that?

7 **A.** Yes.

8 **Q.** Now, if we look at the start of this, Mr. Barnes' email
9 reaches Mr. Harvey at 3:57 P.M. on May 7th of 2021; right?

10 **A.** Yes.

11 **Q.** Mr. Harvey responds four days later; right?

12 **A.** I'm sorry. I missed it, but I'll take your word for it.

13 **Q.** Sorry.

14 **A.** Okay. Yeah. I see it now. Yes.

15 **Q.** So once Mr. Harvey engages and tasked Ms. Watson with
16 investigating this, she responds within half an hour.

17 Do you see that?

18 MR. CROSS: Tony, if you want to just leave it up and
19 not do the call-outs, that might be easier for him.

20 THE WITNESS: Okay. Yes. Thanks. Yes.

21 BY MR. CROSS:

22 **Q.** Bottom of Page 1, she responds within 30 minutes.

23 She responds within 30 minutes; right?

24 **A.** She forwards it to Pam within 30 minutes.

25 **Q.** Yes. Thank you.

1 **A.** Yes.

2 **Q.** Ms. Jones responds within three minutes or forwards it to
3 Investigator Blanchard; right?

4 **A.** Yes.

5 **Q.** He then responds within half an hour and indicates he has
6 already spoken with Mr. Barnes.

7 Do you see that?

8 **A.** Yes.

9 **Q.** Ms. Jones responds to him in two minutes; right?

10 **A.** Yes.

11 **Q.** Ms. Watson responds in about 15 minutes later.

12 Do you see that?

13 **A.** Yes.

14 **Q.** So obviously, folks jumped on this and moved very quickly;
15 right?

16 **A.** Yes.

17 **Q.** Do you have any insight as the former general counsel as
18 to why the document trail on this investigation ends here?

19 **A.** No.

20 **Q.** In responding to any of the discovery requests in this
21 case and preparing witnesses for depositions, particularly
22 corporate reps like Mr. Sterling who verified their response
23 under oath, just yes or no, do you know whether anyone looked
24 into the investigation that was done in May of 2021?

25 **A.** I don't know.

1 Q. Do you know whether the investigation that was done in May
2 of 2021 was alerted to Secretary Raffensperger at that time?

3 A. I wouldn't think so.

4 Q. But you don't know?

5 A. I don't know. But that is not, you know, typically how --
6 I mean, something would have certainly come to me before it
7 would have gone to Secretary Raffensperger.

8 Q. As you sit here, you don't recall alerting it to him?

9 A. No.

10 Q. You don't recall discussing it with him in 2021?

11 A. No. I think that based off of what some of Blanchard's
12 initial info, that he had not found any kind of additional
13 things to go on, you know, I'm not sure what he did after that,
14 but, of course, if he had found additional things, I think it
15 would have been a different story.

16 Q. I didn't ask you to speculate, sir, but thank you.

17 What involvement, as general counsel, did you have with
18 respect to the investigative unit? Did you advise them? Did
19 you help them?

20 A. Yes. So I helped every division of the agency.

21 Q. In your experience, is what we've seen here, is that
22 customary for how the State deals with a potential crime? It
23 reaches out in half an hour to those who are on the ground,
24 might actually be involved in a crime, and say, did you do it,
25 and they say, no, and you say, thank you, and you move on?

1 **A.** I don't know that I can say that. I don't know that there
2 is any indication that Mr. Barnes was involved.

3 **Q.** In fact, at the time, you guys didn't know who was
4 involved; right?

5 **A.** Correct.

6 **Q.** And the extent of the investigation that we see and the
7 documents that have been provided is that a single agent
8 contacted Mr. Barnes, tasked him with doing an investigation.

9 As far as we can tell nothing more happened; right, sir?

10 **A.** I'm not sure.

11 **Q.** As you sit here, you can't describe for the Court any
12 further investigation beyond what we see on May 11th; right?

13 **A.** Based off of -- not until the phone call came out and we
14 kind of became aware of what had occurred -- what had
15 potentially occurred, I should say, at that point.

16 **Q.** Again, as the general counsel, you would have expected
17 that if there had been further investigation beyond May 11th,
18 developed anything of significance, somebody would have alerted
19 you?

20 **A.** In investigations where something of significance is
21 found, I generally would be alerted, yes.

22 **Q.** All right.

23 THE COURT: Are you starting a new topic, or are you
24 going on?

25 MR. CROSS: Yes. Did you want to take a break?

1 THE COURT: No. It's 5:20. I'm just trying to
2 figure out how long --

3 MR. CROSS: I apologize. I thought it was 4:20.

4 THE COURT: Well, maybe it is.

5 **(There was a brief pause in the proceedings.)**

6 THE COURT: If this was a short item, I would say
7 let's go, but if we're going to just --

8 MR. CROSS: Yeah, this is not a short item.

9 THE COURT: All right. Well, then let's pause.

10 Let me just ask you a question, though, about the
11 nothing happening after May 11th.

12 You -- you were aware that Misty Hampton had put this
13 YouTube or video on the screen about her concerns about the
14 Dominion systems; is that right?

15 THE WITNESS: Yes.

16 THE COURT: And did this -- and this all happened
17 before the complaint here, and maybe you just have very little
18 knowledge of it, but it was about Cyber Ninjas and also the
19 notice, the formal notice about this from Dominion in May.

20 Did you ever think to go back and say, well, this is
21 sort of strange because it links up also to the head of
22 elections there, Misty's public suspicion about Dominion? Did
23 it ever occur to you --

24 THE WITNESS: So --

25 THE COURT: -- to ask those questions?

1 THE WITNESS: So I was definitely aware of Cyber
2 Ninjas, you know, just in my role in following the elections
3 following 2020. And aware of, you know, what they were doing
4 in Arizona was where they seemed to really be operating. And
5 it seemed like the Arizona, you know, quote-unquote, forensic
6 audit that Cyber Ninjas was doing was what led to Dominion
7 sending out that -- that customer notice.

8 I was not aware of any Cyber Ninjas activity in
9 Georgia. You know, looking back, I wish that business card had
10 like set off more alarm bells for me, but it did not.

11 We were dealing with a lot of sort of characters
12 regarding the 2020 election -- following the 2020 election who
13 were in Georgia. We were generally aware of what they were
14 doing, if anything, in terms of if there was any significant
15 activity, it seemed to be something that we were aware of.

16 It turned out that this -- and that is, frankly, why
17 I was -- when we first heard about the Coffee County thing from
18 Scott Hall in this conversation with Ms. Marks, based on what I
19 had previously heard from Scott Hall, which we had
20 investigated, and all of his allegations had turned out to be
21 not true. He signed an affidavit regarding pristine ballots.
22 He made other allegations.

23 So that is why when I first heard of it I was
24 somewhat skeptical, especially of the idea that something of
25 that magnitude could have happened without sort of more

1 knowledge.

2 I think the fact that Coffee County is quite far away
3 from Atlanta probably helped them to do that. I think the fact
4 that Misty probably knew what she was doing was wrong and, I
5 think, hid it from people. Because with almost every elections
6 director, they have a great relationship with Chris Harvey.
7 And with our current director, they would call. Like, we would
8 be aware of something like that, and we did hear about things
9 like that.

10 THE COURT: Well, I'm really just asking more about
11 the fact that you already knew that she had been vocal --
12 publicly vocal and on-the-net vocal and in-the-legislature
13 vocal with a member of -- another person in the community. And
14 then so it is not like that wasn't -- you weren't aware of that
15 because they had been so vocal and in front of the legislature.

16 THE WITNESS: I think the fact that Misty Hampton was
17 no longer elections director in Coffee County as of, I think,
18 end of January 2021 was definitely something given that YouTube
19 video, because that was just a very, you know, outside the box
20 type thing. I mean, that is not something any election
21 official should ever do.

22 And so the fact that she was removed as that -- soon
23 after that, even if it wasn't for that reason, according to
24 Coffee County, I was certainly glad that that was the case.

25 THE COURT: Well, I don't want to get into -- all

1 into her, but obviously, you knew all about that. That was
2 my -- which you agree.

3 THE WITNESS: I knew about the video --

4 THE COURT: But anyway, you also knew the Ninjas were
5 an issue, so that is why --

6 THE WITNESS: I did not know even with this business
7 card -- I knew about Cyber Ninjas in Arizona, and they were
8 not, you know, quiet about what was happening in Arizona. They
9 were not ninja-like in terms of going in and going out. So the
10 idea that if something like that had happened, if something
11 like that forensic audit or had happened in -- that had
12 happened in Arizona, if a county tried to do that, the fact
13 that it happened, I thought that was something that we would be
14 aware of --

15 THE COURT: Okay. Well, I'll let counsel pursue that
16 further tomorrow.

17 MR. CROSS: If I can just ask a couple of quick
18 questions and then -- before we break, Your Honor, to follow
19 up.

20 BY MR. CROSS:

21 **Q.** Mr. Germany, you also knew in the summer of 2021 and then,
22 of course, in the spring of 2022 when things started to unfold
23 publicly that Coffee County was the only county that refused to
24 certify the election in 2020; right?

25 **A.** So I know there was an issue with their -- with them

1 certifying, and I do believe it was the January 2021 runoff,
2 not the November 2020 election.

3 But I recall talking about that with Chris, vaguely. And
4 the conclusion was, well, they -- we told them -- Chris told
5 them, yeah, you better -- you have to certify, so you need to
6 figure out what you are doing.

7 **Q.** Mr. Germany, sorry to cut you off --

8 **A.** And then to finish my answer if that is okay --

9 **Q.** Okay.

10 **A.** -- is that they did end up certifying that election.

11 **Q.** But you knew that they were the only county that had
12 refused to certify an election in 2021 and 2022? You knew
13 that; right?

14 **A.** I don't think that is true because they did certify their
15 election.

16 **Q.** Okay. There was a period of time for which they were the
17 only county in the State -- they were the only county in the
18 country that refused to certify an election in the end of 2020.

19 Do you recall that, sir, just yes or no?

20 **A.** Well, in November 2020, they did certify. I don't recall
21 there being any issues in November 2020. I do recall there
22 being issues in January 2021 with Coffee County, or maybe it
23 was about the re-count in November.

24 But I do -- my takeaway was they did -- I think there was
25 noise, and there was noise other places also, and they did

1 certify as they are required to do.

2 **Q.** Just a couple of more questions, and we'll be done for
3 today.

4 You said that you were comforted because when you -- when
5 Mr. Barnes' note came in, Ms. Hampton was no longer the
6 election director.

7 Do you recall saying that in response to the Court's
8 questions?

9 **A.** I know that I was --

10 **Q.** Sir, do you recall saying that?

11 **A.** I don't know that -- I don't think -- I don't recall what
12 I said. I know I was glad -- I thought it was a good thing
13 that she was no longer the elections director.

14 **Q.** Just to recall, you understood that Mr. Barnes is
15 reporting that the card, the Cyber Ninjas card was left by
16 Ms. Hampton.

17 You are not confused about that; right?

18 **MR. BEDARD:** Objection, Your Honor. I think that
19 misstates the facts in the evidence if we go back to the --

20 **THE COURT:** I'm sorry. I just didn't -- you are --

21 **MR. BEDARD:** No, it's okay. I wanted --

22 **MR. CROSS:** I'll restate it. That is a fair
23 objection.

24 **BY MR. CROSS:**

25 **Q.** You talked about Ms. Hampton leaving. I just want to make

1 sure you are clear that the report that came in was that
2 Mr. Barnes found the card at the base of the computer where
3 Ms. Hampton used to work. It was not his card.

4 **A.** Correct. Yes. Yes.

5 **Q.** Got it. Okay.

6 And the last point, just following up on a point the Judge
7 made: In April of 2022, were you aware that Gabe Sterling, as
8 the COO, publicly announced that the Secretary's office had
9 investigated Mr. Hall's allegations whether there were breaches
10 in Coffee County, and his public announcement was, it didn't
11 happen?

12 Do you recall that, sir?

13 **A.** I recall something like that, yes.

14 **Q.** And so when the allegations of breaches in Coffee County
15 came to light in the February/March '22 time frame, and that is
16 on top of an investigation into potential access to the voting
17 equipment by Cyber Ninjas in May of 2021 in the same county,
18 didn't set off any alarm bells for you or anyone else, as far
19 as you know, at the Secretary's office? Mr. Sterling was
20 comfortable just saying it didn't happen?

21 MR. BEDARD: Objection, Your Honor. Calls for
22 speculation as to what Mr. Sterling said. He is on their
23 witness list. They can ask him about that.

24 BY MR. CROSS:

25 **Q.** Didn't set off any alarm bells for you?

1 **A.** After that call came out, which I believe was about
2 March 2022, we did reopen the investigation, so it did set off
3 some for me to say, hey, we need to look into what happened
4 here.

5 **Q.** And a month later, the public announcement was that you
6 investigated it, and it didn't happen; right?

7 **A.** I don't think that announcement -- I recall Gabe saying
8 something like that.

9 **Q.** When you heard that, just yes or no, did you have any --
10 did you have any discussion with him?

11 **A.** Yes.

12 **Q.** I assume the discussion is privileged? You would treat it
13 as privileged?

14 **A.** Yes.

15 MR. CROSS: No further questions today, Your Honor.

16 THE COURT: All right. Well, please don't discuss
17 your testimony with anyone else. We're going to resume
18 tomorrow at 9:30.

19 MR. BEDARD: Just for clarification, you said no
20 further questions today; right?

21 MR. CROSS: Yes.

22 MR. BEDARD: You are still continuing cross?

23 THE COURT: He will continue. I understood that he
24 was on to a larger topic, yeah.

25 MR. TYSON: Thank you.

1 THE COURT: Are we going to finish this witness
2 tomorrow?

3 MR. CROSS: Oh, absolutely. Yes, Your Honor.

4 THE COURT: All right. All right. So just to remind
5 you in terms of your lunchbox, half an hour is not long. And
6 I'm just trying to get through -- so we're starting at 9:30,
7 and we'll take half an hour at 12:00. And then we'll go until
8 2:00, or, you know, a few minutes after 2:00. And then no
9 court on MLK Day, and we'll start back on Tuesday at 9:30.

10 Thank you. All right. See you tomorrow morning.

11 Thank you. All right.

12 (The proceedings were thereby adjourned at 5:34
13 PM.)

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 286 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 11th day of January, 2024.



SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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